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Legal Reasons Why there is No Longer a Controversy for the FCC to Interpret ---The Case is Moot

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1) There has never been a controversy between the parties that section 2.1.8 allows traffic only transfers and CCI must maintain its revenue and time commitment. CCI would be responsible for potential shortfall on the revenue commitment and potential termination on the time commitment. The only controversy was fraudulent use under section 2.2.4 in 1995 and that AT&T defense was denied by Judge Politan in 1996. To follow is the chronological flow of AT&T's position and how it changed and how it intentionally deceived the Courts and tried to scam the FCC until the FCC issued its 2007 Order.

(Judge Politan's May 1995 Decision pg. 10 para 2)

> On January 13, 1995, PSE and CCI jointly executed and submitted written orders to AT&T to transfer the 800 traffic under the plans CCI had obtained from the Inga companies to the credit of PSE. Only the traffic was to be transferred, not the plans themselves. In this way, **CCI would maintain control over the plans** while at the same time benefiting from the much larger discounts enjoyed by PSE under KT-516. AT&T refused to accept this second transfer on the ground that CCI was not the customer of record on the plans at issue, and thus could not transfer the traffic under those plans to PSE. **AT&T was further troubled** by the fact that if **only the traffic on the plans and not the plans themselves were transferred to PSE**, the liability for **shortfall and termination charges attendant thereto would then be vested in CCI**: an empty shell in AT&T's view."

AT&T 3/21/1995 cross examination of Mr. Inga:

> Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **"lead account**" ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn't that correct?**
> Inga: Yes

Politan March 1996

> "Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations "*involved herein*" are all **tariffed obligations**, for which **"CCI, not PSE"** would be obligated.

2) FCC 2003 confirms that it agreed with the District Court's obligation allocation which was done **under 2.1.8:** Decision Pg. 7

> CCI and PSE retained the benefits and obligations of their respective agreements with AT&T. We note in this regard that both the forms submitted to AT&T and the agreement between CCI and PSE stated that CCI would continue to subscribe to its existing CSTP II plans. Thus, CCI still would have to meet its tariffed commitments, without the use of the traffic moved to PSE, and AT&T also would remain obligated to CCI under the terms of Tariff No. 2. **(FN 50)** The moved traffic would be used to meet PSE's CT 516 volume commitments and, once moved, would no longer be associated with CCI's CSTP II. If the traffic were moved away from CCI under Tariff 2, to PSE under Contract Tariff 516, AT&T would get less money for the same traffic – the traffic would be discounted 66 percent instead of 28 percent**. (FN 51)**
>
> **Pg7 fn50**: Under **2.1.8** Accordingly, at least theoretically, the traffic might have been returned to CCI at some point to enable it to meet any CSTP II obligations.
>
> **Pg 7 Footnote 51** under **header 2.1.8**:**"See First District Court Opinion at 5".** (3) CCI would continue to be responsible to AT&T for any commitments **associated with the CSTP II Plans** (which would not be discontinued); and (4) PSE would assist in moving accounts back to CCI upon written notice from CCI that AT&T required **CCI to meet its commitments.**

3) The FCC's task was to interpret AT&T's sole defense of fraudulent use under section 2.2.4 of AT&T's tariff. Fraudulent use took the position that CCI as an AT&T Customer of Record must keep its revenue and time commitment because it is not transferring its CSTPII/RVPP plan—it is transferring traffic only (end user locations from the plans). Therefore AT&T's position was that CCI would not be able to meet the revenue commitment and if substantial traffic was transferred to PSE's discount plan CT-516. AT&T's sole defense:

FCC 2003 Pg.10 para 13.

> "Because AT&T did not act in accordance with the **"fraudulent use"** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon **"any other provisions of its tariff"** to justify its conduct."

4) AT&T and plaintiffs were in agreement that section 2.1.8 allows traffic only transfers and CCI would need to maintain its revenue and time commitment. Failure to meet the revenue

commitment would result in shortfall charges. Failure to meet time commitment would result in termination charges. AT&T was not concerned with the termination charges because it did understand that CCI was not going to terminate its non-transferred plans. [1]

Here as Exhibit A is page 4 of AT&T's April 15th 2003 brief to the FCC.

> As AT&T's customers-of-record, the Petitioners were responsible for the tariffed shortfall and termination charges. **[AT&T footnote 3 below]** Moreover, as AT&T has already demonstrated, as AT&T's customers -of-record Petitioners were precluded under the governing tariff from transferring their CSTPII **Plans** to PSE unless PSE agreed to assume all of Petitioner's obligations under those same **plans**, including tariffed shortfall and termination charges.

AT&T Footnote 3: Is explaining that the tariff definitions of a CSTPII/RVPP at 3.3.1.Q requires that since CCI is not transferring its plan and remains an AT&T Customer of Record on the CCI-PSE traffic only transfer, CCI is responsible for its keep its Revenue and Time Commitment and thus is responsible for potential shortfall and termination liability for failure to meet the plan commitments.

> [3] Section 3.3.1.Q of AT&T Tariff F.C.C. No. 2; *see also*, AT&T Corp. Further Comments, filed April 2, 2003 ("AT&T's 2003 Further Comments") at 7-8.

Here as Exhibit G are the 3.3.1.Q definitions of CSTPII/RVPP plans. The last bullet on the page is what AT&T is referring to in its fn 3 footnote as CCI must continue to be responsible for the shortfall and termination charges for failure to meet the revenue and time commitments of the CSTPII/RVPP plan. CCI did not transfer its plans so the shortfall and termination remained with CCI. It explains that under the tariff there is a **difference** in which obligations transfer depending upon whether a (traffic only non-plan transfer) or a **plan** transfer is ordered. The parties agreed that revenue and time commitments and their associated potential liabilities for shortfall and termination charges only transfer on a plan transfer.

Since the CCI-PSE transfer was a traffic only transfer, that required CCI to maintain the Customer of Record revenue and time commitments AT&T understood plaintiffs were strictly adhering to section 2.1.8 so AT&T relied upon its fraudulent use provision 2.2.4 to deny the transfer. [2]

[1] FCC 2003 Decision Page 8 fn 56: Opposition at 5. Although AT&T also argues that the move also avoided the payment of tariffed *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter.

[2] AT&T understood plaintiffs were strictly adhering to section 2.1.8 so AT&T on February 16th 1995 filed Tr8179 with the FCC. It was an attempt to retroactively change section 2.1.8 to cover the CCI_PSE transfer so when substantial traffic was transferred AT&T could force the plan to transfer which was the only way it could force the plan commitments to transfer. The FCC advised AT&T that such a change in

So the parties agreed section 2.1.8 allowed traffic only transfers and CCI would need to maintain its revenue and time commitment. The only controversy as Judge Politan and the FCC stated was AT&T trying to rely upon its fraudulent use 2.2.4 section to deny the CCI-PSE section 2.1.8 traffic only transfer. Judge Politan in March 1996 issued the injunction because he understood the CCI plans were pre June 17th 1994 grandfathered and thus immune from the potential shortfall charges AT&T claimed. **Here as EXHIBIT O** are the 1995 and 1996 versions of discontinuance with or without liability and pre June 17th 1994 plans are exempt from penalties.

3) AT&T continued the position that revenue and time commitments do not transfer on a traffic only transfer before the DC Circuit. AT&T's position to the DC Circuit was that **2.1.8** does address traffic only transfers without the revenue and time commitments. AT&T reply brief to DC Circuit maintained its position that section 2.1.8 did allow traffic only transfers and of course as AT&T's Customer of Record it would have to maintain its revenue and time commitment. AT&T Statement to the DC Circuit on pg 9:

> **"Section 2.1.8** "addresses" the transfer of end-user traffic ***without*** the associated liabilities." (AT&T added emphasis on the word: ***without***)

AT&T Oral Argument to DC Circuit

> Mr. Carpenter: Now what obligations they are going to end up assuming **will vary depending** on what service is being transferred. **(11/12/04 DC Circuit ORAL Argument pg.12 Line 12**

AT&T Counsel Carpenter during Third Circuit Oral:

> We point out in our brief that there's a **distinction** between transfers of **entire plans**, and transfers of individual end-users locations. That when the "**plan"** is transferred, **"all the obligations"** have to go along with it. (Pg 15 line 9)

Here as EXHIBIT M bullet 4 is a tariff page that confirms that locations can move from one CSTPII plan to another CSTPII plan and the cost AT&T charged was $50 per location. The $50 charge only was when section 2.1.8 was used as there was no way for AT&T to track if one customer deleted an account and another customer signed up an account. **Here as EXHIBIT N** is promo 183 that allowed accounts to transfer without the $50 per location fee. We used section 2.1.8 to do this transfer of 487 account locations to Winback plan ID 1658 on 8.1.94 and AT&T wrote confirmed. **Here as Exhibit Q** is the March 20 **1998** 2.4.1.A 4 Proof of Authorization for carrier Change and 2.4.1.A B Agency Agreement which plaintiffs actually did not need at the time of the Jan 13th **1995** CCI transfer **but plaintiffs had anyway**. Plaintiffs President Mr Inga owned all four companies 100%; however plaintiffs often transferred traffic to and from other AT&T reseller plans via 2.1.8 and therefore obtained from each customer a full Letter of Agency

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2.1.8 would be substantive and thus prospective and the CCI-PSE transaction would be grandfathered, so AT&T withdrew the Tr. 8179 on June 2nd 1995 after the May 1995 Decision.

to have total control over the end-user locations before the regulations within this Exhibit Q were ever introduced into the tariff.

4) AT&T understood that the revenue and time commitments only transfer on a **plan** transfer not a traffic only transfer so AT&T misrepresented that the CCI-PSE transfer was a PLAN TRANSFER not a traffic only transfer. AT&T misrepresented to the DC Circuit "**in this case** the relevant WATS services are the CSTPII **plans** not traffic only. **(**DC Circuit page 7-8)

> "There, AT&T noted in passing that "**in this case** the relevant WATS services are **the CSTP II Plans**."....[**Section 2.1.8**], by its terms, allows a transfer of CCI's service to PSE only if PSE agreed to assume **all obligations under those plans.** *Yet CCI explicitly amended the transfer of services form to read "Traffic Only."* By expressly declaring that it did not intend to effectuate a transfer of all obligations under the **plans** to PSE . . . *the proposed transfer, on its face, violated the terms of* ***Section 2.1.8.*****"**

5) Above AT&T is saying that if the CCI-PSE transaction was a **plan transfer** it violated 2.1.8 because the revenue and time commitment did not transfer. Plaintiffs agree that on a plan transfer the revenue and time commitment would transfer. The revenue and time commitment did transfer when the Inga Companies PLANS were transferred to CCI. But the CCI-PSE transfer was not a plan transfer.

6) AT&T's statement above regarding they wrote "Traffic Only" on the form was AT&T conceding that "traffic only" meant traffic only not a plan transfer. However AT&T at oral argument in DC Circuit AT&T Counsel Carpenter short quoted the "Traffic Only" sentence down to Traffic Only and said "traffic only" meant traffic only don't transfer any obligations. This misrepresentation led to plaintiffs post oral argument motion to correct the record mentioned in the last footnote of the DC Circuit Decision.

7) In any event the position of AT&T from Judge Politan in 1995 through the DC Circuit was that only on plan transfers do the plans revenue and time commitment transfer. The DC Circuit correctly understood that traffic only does transfer on a traffic only transfer under 2.1.8:

The DC Circuit also found that 2.1.8 allowed traffic only transfers stated on pg.8:

> Absent such reliance, the commission provides us with little reason why the plain language of **Section 2.1.8** fails to encompass transfers of traffic alone.

and the DC Circuit Decision stated on pg.10:

> As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of **Section 2.1.8** encompasses all transfers of WATS, and not just transfers of entire plans.

8) The interesting about the DC Circuit Decision was that the DC Circuit determined that section 2.1.8 allowed traffic only transfers but said it did not see it on its face.

> DC Circuit Page 7: The Section **on its face** does not differentiate between transfers of entire plans and transfers of traffic

Judge Politan nor the DC Circuit saw where in the tariff language that section 2.1.8 explicitly allows traffic only transfers but DC Circuit decided that it does anyway. Actually section 2.1.8 does indeed differentiate "on its face" that "**any number"** of accounts can be transferred. Anything less than **ALL NUMBERS** means traffic as opposed to the plan can transfer.

See section 2.1.8 as show in the FCC 2003 Order at (FCC 2003 pg. 6 fn. 46) opening states:

> "Transfer or Assignment – WATS, including **any** associated telephone **number(s),** may be transferred or assigned to a new Customer, provided that:

Simple: "**any" "number"** can transfer. If 2.1.8 only allowed plan transfers it would not say "any number(s)—it would only mandate "all numbers."

9) The Third Circuit referred the FCC a 1995 controversy; however by 1996 Judge Politan had denied AT&T's speculation that it was going to be deprived of shortfall charges for non-rendered service.

Judge Politan understood the plans were pre June 17th 1994 immune from shortfall as they could be restructured. As the FCC 2003 Order stated Judge Politan did not refer the June 17th 1994 exemption because Judge Politan understood it and this is the Law of the Case.

> A) Judge Politan: "Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only "tangible" concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)
>
> B) Judge Politan: **"**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff." May 1995 NJFDC Decision pg. 11
>
> C) Judge Politan: "In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can

> and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T." May 1995 NJFDC Decision pg. 24

10) Furthermore the NJFDC Judge Politan Court determined in March 1996 that AT&T's fraudulent use position which was "premised on the danger of shortfalls, was not "properly substantiated by AT&T"

> To the extent however that AT&T's demand for fifteen million dollars' security is **premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (March 1996 Decision page 19 para 1)

Having understood the fraudulent use assertion had no merit Judge Politan determined in his

Court's March 1996 Decision Page 16 para 1:

> **The Court finds nothing in the Tariff F.C.C. No. 2 which prevents fractionalization**, and contemplates a like finding by the F.C.C. Cleary, therefore, plaintiffs have established a strong likelihood of success on the merits. [3]

11) The FCC receives the 1995 controversy and denies AT&T's sole defense of fraudulent use even assuming AT&T had merit to raise such a defense in the first place. FCC 2003 Decision pg. 8 para 11:

> Based upon our review of AT&T's tariff, we conclude that, **even assuming** that AT&T reasonably suspected a violation of the "fraudulent use" provisions of its tariff – **which we do not decide** – those provisions did not authorize AT&T to refuse to move the traffic from CCI to PSE.

12) The DC Circuit did not reject or remand the FCC's decision to deny AT&T's sole defense of fraudulent use. The DC Circuit agreed with plaintiffs and AT&T that section 2.1.8 allowed traffic only transfers.

13) The only controversy referred to the FCC was fraudulent use as that was AT&T's sole defense as there was no controversy that section 2.1.8 allowed traffic only transfers and CCI must keep its revenue and time commitments.

[3] "Fractionalization" was Judge Politan's description for what is referred to as "traffic only" or "location only" transfer without CCI's entire plan and all end-user accounts being transferred.

14) The DC Circuit could only review what was referred to the FCC. The DC Circuit was confused about which obligations transfer even though AT&T and plaintiffs were explicitly advising the DC Circuit that CCI must keep its revenue commitment. AT&T obviously would not have asserted as fraudulent use defense if CCI was not mandated by the tariff to keep its revenue and time commitment. Which obligations transfer was not a controversy the FCC needed to interpret simply because it was not a controversy between the parties in 1995. The DC Circuit was confused by the language in section 2.1.8 but it was not within the scope of its decision because the FCC was not tasked to interpret obligation allocation.

The DC Circuit DC Circuit on page 11 fn2

> "How this enumeration affects the requirement that new customer assume "*all* obligations of the former Customer" (emphasis added) is **beyond the scope of our opinion**."

15) The DC Circuit decision states that this obligation allocation is **"beyond the scope of our opinion"** because DC was limited to reviewing **only what was referred to and interpreted by the FCC**. Therefore since it was not within DC's scope to review it, then certainly it was not within DC's scope to address it or remand it.

16) Since the Commission was not afforded the opportunity from the District Court referral to interpret obligations the DC Circuit is **precluded from addressing this issue** and thus can't remand it as it was never before the FCC as stated within DC Circuit Decision pg. 10 fn1.

> The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass."** 47 U.S.C. Section 405(a). It does not prevent us from considering "whether the **original question** was correctly decided," MCI v FCC, 10 F3d 842, 845 (D.C. Circ. 1993), or whether the FCC "relied upon faulty logic." Nat'l Ass'n for Better Broadcasting v. FCC 830 F2d 270, 275 D.C. Cir. 1987). The analysis recounted above speaks to the soundness of the Commission's ruling on **the question initially presented**, and not to any novel legal or factual claims."

17) The DC Circuit could only address the original 2.2.4 issue and whether 2.1.8 allows traffic only to transfer. Where it states on page 11 last line: "The petition for review is granted." That simply means that only what was referred to the FCC 2.2.4 and can traffic only transfer without the plan was reviewed by the DC Circuit.

18) The obligations allocation under 2.1.8 had already been stated by AT&T as customer plan obligations don't transfer in order to assert its 2.2.4 fraudulent use defense under 2.2.4. The DC Circuit did not review obligations allocation as it was not referred to the FCC and therefore not reviewed and therefore can't remand what the FCC was not afforded the opportunity to address and thus no remand.

19) The case goes to NJFDC Judge Bassler after the DC Circuit Decision. AT&T has lost its sole defense of fraudulent use. AT&T creates a brand new controversy under section 2.1.8. Having

lost the fraudulent use defense in which AT&T understood CCI must keep its revenue and time commitment AT&T changes its defense and states that CCI must transfer its revenue and time commitment as its begins its “all obligations” intentional fraud on Judge Bassler.

20) AT&T of course knew it had no evidence of such an animal existed where the revenue and time commitment transferred but the plan did not but AT&T pulls off the fraud on Judge Bassler as AT&T creates the new “all obligations” intentional fraud on Judge Bassler.

Judge Bassler Oral Argument

21) All about which obligations transfer under 2.1.8.

THE COURT: PAGE 12:

But let's assume you're
correct in your argument and the only thing referred was a
fractionalization issue and the Circuit Court referral to the
agency is not as broad as defendants argue.
But assume that's correct. What would prevent me at
this juncture from saying, you know, I don't want to make this
call as to what is encompassed by **"all obligations.**" Look at
that as being an interpretation of the tariff. That matter
refer to the agency.

Oral Argument Pg. 13:

THE COURT: I don't find much comfort in that because
the agency wasn't focused on the term, "all obligations."

PAGE 14:

THE COURT: Tariff uses the phrase, "**all obligations**"?
MR. ARLEO: Right.
THE COURT: So the question then is, what does that
mean?

PAGE 18:

Plaintiff Attorney Arleo:

We continue to find evidence that just undercuts any argument that shortfall
terminations are part of this **all obligation language** into
2.1.8.
THE COURT: Why don't we have the agency say that
because if I call it wrong then we got another appeal to the
Third Circuit. Then back to the agency again. Then an appeal

16 from the agency to the DC Circuit. So, why don't I short
17 circuit it, just say you go back?

Page 20 :
AT&T counsel Guerra Arguing plan obligations transferring is the controversy:

15 We have been litigating 11 years because they say they
16 didn't have to transfer that. I, frankly, don't understand.
17 They say that's a question of fact. It's in every one of their
18 briefs, including briefs they submitted here. They've done the
19 things. They have transferred. That's why they're fighting.
20 **They have no intention of transferring them.**

PAGE 22 AT&T Counsel Guerra regarding discrimination claims: [4]

8 MR. GUERRA: It's a possibility. But I think getting
9 the answer from the FCC is first.
10 Just as the FCC said, you don't get to this question
11 until you conclude that 2.1.8. **Required all these obligations**
12 **to transfer.** Because if it didn't, then AT&T didn't
13 discriminate with respect to the other parties allegedly allowed
14 to make transfers without switching the obligations over.
15 THE COURT: If you waived it to the other ones,
16 assisted on it here --
17 MR. GUERRA: But already resolved the refusal here was
18 unlawful based on the language. Tariff, you wouldn't need to

[4] Regarding Discrimination Claims: **Here is Exhibit S.** NJFDC Oral Argument March 8th 1995 Pages 69 through 72

MR. BARILLARI: They have to qualify for it.
THE COURT: What do they have to do
MR. BARILLARI: They have to have the same traffic patterns that the services are designed to accommodate. Currently, they don't have those traffic patterns.
MR. HELEIN: No, your Honor. That is not true.

Because 2.1.8 allowed traffic only to transfer, plaintiffs could transfer whatever traffic pattern AT&T contract tariff required. Day Traffic/ Night Traffic, Dedicated Service/Switched Service/Geo Located Service. Whatever traffic service was needed plaintiffs could accommodate. With over $100 million in billing in 1993 plaintiffs were by far the largest aggregator in the USA and had every conceivable pattern that could be transferred into a new Contract but AT&T simply wanted plaintiffs out of business. **Here as Exhibit T** is the RVPPP report that shows aggregator volumes and plaintiffs aggregate led the industry by far. So the NJFDC can also decide that plaintiffs were discriminated against as it demanded its own CT or wanted one that was already in the market and AT&T refused.

19 get into discrimination.

Page 23 -24

19 THE COURT: Why does the agency have the more expertise
20 on making the call as to whether the tariff phraseology, "all
21 obligations" includes shortfall in termination?
22 MR. GUERRA: Well, your Honor, first of all the FCC
23 interprets tariffs all the time. It has an understanding of
24 what's common practice. It has an understanding that no Court
25 would have. The Third Circuit has always said **interpreting 2.18**

1 is a job. FCC, they identify generality, important social
2 policies.

22) AT&T created in 2006 a new controversy regarding which obligations transfer under 2.1.8. Prior to Judge Bassler's Court plaintiffs agreed with AT&T that CCI must keep its plan obligations (revenue and time commitment). That of course was the fundamental basis of AT&T's only defense was fraudulent use under 2.2.4.

23) AT&T kept its' same outside law firm but switched out counsels. All the former AT&T counsels (Meade, Whitmer, Carpenter, Friedman) get exiled into Siberia and Joseph Guerra is tasked with pulling off the "all obligations" scam on Judge Bassler, which he also pulled on the NJFDC in 2015 as outlined on the FCC server: http://apps.fcc.gov/ecfs/comment/view?id=60001310889 **EXHIBIT I** shows that in 2002 AT&T still had not mandated that "all obligations" must transfer as it states "may require the new customer to assume all of the current customer's obligations." AT&T has never required "all obligations" to transfer on a traffic only transfer since toll free service started in 1967. It was an intentional AT&T scam that started in Judge Bassler's Court.

AT&T claimed to Judge Politan March 8th 1995 that there were thousands of transfers as of that date but AT&T of course can't produce one in which the plan commitments transfer on a traffic only transfer.

NJFDC Oral Argument pg. 53: AT&T counsel MR. WHITMER (**Here as EXHIBIT R)**

> "But there are literally - - my guess is hundreds, if not thousands, of transfers that have happened among aggregators and aggregations plans."

24) Having lost its fraudulent use defense AT&T **abandoned** its 2.2.4 Fraudulent Use defense. AT&T obviously couldn't take a fraudulent use position before Judge Bassler that CCI must keep its plan commitments to the 2006 created "all obligations" controversy that CCI must transfer its revenue and time commitment.

25) Judge Bassler would have laughed if AT&T was simultaneously asserting that under section 2.1.8 CCI must keep ***and*** must transfer the revenue and time commitment. So despite knowing it had no evidence AT&T rolled along with its new "all obligations" scam and **AT&T gave up its sole defense of fraudulent use.**

NJFDC Judges Bassler's new controversy was referred by Judge Bassler in 2006 was:

> Resolve **the issue of precisely which obligations should have been transferred under section 2.1.8** of Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion in AT&T Corp. v. Federal Communications Commission , 394 F. 3d 933 (D.C. Circ. 2005).

26) Judge Bassler referral confirms that the parties agreed that section 2.1.8 allows traffic only transfers. Therefore under the Administrative Procedures Act there is no controversy or uncertainty for the FCC to decide whether 2.1.8 allows traffic only transfer.

The FCC page 11 para 15:

> The Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."[5] When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission will seek, in exercising its discretion, to resolve issues arising under the Act that are necessary to assist the referring court.

27) The DC Circuit agreed with plaintiffs and AT&T that 2.1.8 does allow traffic only transfers. [6] Therefore the FCC no longer needs to decide whether 2.1.8 allows traffic only transfers as per the Administrative Procedures Act use of 2.1.8 for traffic only transfers as it is no longer a "controversy or uncertainty."

The controversy created by AT&T (after DC Circuit) before NJFDC Judge Bassler was that CCI must also transfer its revenue and time commitment under 2.1.8. There was never a controversy regarding which obligation transfers in 1995. In 1995 AT&T asserted a fraudulent use defense (2.2.4) in which AT&T conceded that under section 2.1.8 CCI must keep the revenue and time commitment.

28) AT&T confirmed its sole initial defense of fraudulent use (2.2.4) that was relied upon in 1995 to deny the CCI-PSE transfer was abandoned as AT&T reiterated its position to the FCC that it had before Judge Bassler. AT&T's February 1st 2016 Comments to FCC page 6:

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[5] 5 U.S.C. § 554(e); 47 C.F.R. § 1.2; *see also* 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C.Cir.), *cert denied*, 414 U.S. 914 (1973).

[6] The DC Circuit pg.8:

> Absent such reliance, the commission provides us with little reason why the plain language of **Section 2.1.8** fails to encompass transfers of traffic alone.

DC Circuit pg.10:

> As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of **Section 2.1.8** encompasses all transfers of WATS, and not just transfers of entire plans.

"The issue pending before the Commission is the scope of Section 2.1.8, **not Section 2.2.4**."

Petitioners' reliance on the Commission's 1995 Order is also misplaced. They claim that this Order undermined AT&T's fraudulent use defense. Grimes Letter at 2-3. This is irrelevant: the issue pending before the Commission is the scope of Section 2.1.8, not Section 2.2.4. Nor does the 1995 Order have any other bearing on this proceeding. In the Order's "grandfathering"

29) Section 2.1.8 has a 15 days statute of limitations to raise a defense. Not only did AT&T fail to raise a section 2.2.4 fraudulent use defense within the 15 days, AT&T incredibly raised its new "all obligations" scam under 2.1.8 about 11 years after the January 13th 1995 CCI-PSE transfer. AT&T claimed in a letter dated Jan 13th 1995 that there was still pending a security deposit issue that was holding up the Inga to CCI plan transfer and once that was done the CCI-PSE transfer could be addressed but the fact show the Inga –CCI plan transfer that was ordered Dec 16th 1994 had already gone through and CCI was already getting AT&T credits. So AT&T can't possibly claim that the plan transfer was tolling the traffic only transfer that was never denied by Jan 28th 1995 max date to meet the 15 days statute of limitations within 2.1.8. **Here as exhibit F** are AT&T phone bill pages which are aggregator credits from AT&T to Florida based CCI. When AT&T requested a security deposit of CCI on the Inga to CCI Plan transfer, the 4 Inga Companies plaintiffs attempted to transfer the same traffic directly from its plans to PSE. AT&T confirmed receipt of the Inga to PSE traffic only transfer and did not deny the order but simply never processed the order. There was simply no way AT&T was going to discount the traffic and was willing to intentionally violate its tariff in any manner possible to put plaintiffs out of business.

30) Judge Bassler definitely wanted the question of which obligations transfer under section 2.1.8 interpreted by the FCC the issue with that is that it is outside the scope of the Third Circuit referral. I would like to address within Judge Bassler's referral: "as well as any other issues left open" but there are **no other issues left open**.

AT&T's Sole Defense of Fraudulent use was Completely Destroyed for Many Reasons

A) FCC denied and DC Circuit reviewed due to illegal remedy. It is the Law of the Case. [7]

[7] If an appellate court (here D.C. Circuit) has not decided a legal question and the case goes to a lower court (here FCC) for further proceedings**, the legal question, (fraudulent use) not determined by the appellate court (D.C. Circuit) will not be differently determined on a subsequent appeal (Judge Bassler Referral) in the same case where the facts remain the same.** *Allen v. Michigan Bell Tel. Co.*, 232 N.W.2d 302, 303. Additionally an appellate court's determination on a legal issue is binding on both the trial court and FCC **and an appellate court (DC Circuit) on a subsequent appeal** given the same case and substantially the same facts. *Hinds v. McNair*, 413 N.E.2d 586, 607. (So both the FCC and DC Circuit by law must find that AT&T used an illegal remedy on fraudulent use so the case is moot. AT&T's fraudulent use position is based upon obligations not transferring and thus is the same as plaintiff's and answers Judge Bassler's 2006 referral.)

B) Fraudulent Use Only Applies to **Use** of Services not –Non Use….
FCC 2003 Decision Page 5

> Second, the Bureau asked the parties to "comment on the remedy that AT&T's Tariff FCC No. 2 specifies that AT&T may exercise if AT&T has reason to believe that its customer is violating section 2.2.4.A.2 of that tariff by '[u]sing or attempting to **use** WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by … [u]sing fraudulent means or devices, tricks, [or] schemes.
>
> **2.2.4. Fraudulent Use -** The fraudulent **use of**, or the intended or attempted fraudulent **use** of, **WATS** is prohibited. The following activities constitute fraudulent use:

Here as EXHIBIT H is how USE is actually defined:

> **2.2 USE**
> **2.2.1. General -** WATS may be used for any lawful purpose consistent with its **transmission parameters**. WATS is furnished for the **transmission of voice and non-voice communications**. For non-voice communications, typical uses are data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the service.

31) AT&T relates the potential for shortfalls to the theft of service. AT&T's logic is patently impaired. Section 2.2.4 deals with Fraudulent **USE.** The word **use** is the key word. There was no use of WATS which stands for WIDE AREA PHONE **SERVICE**. Service means an AT&T customer is using AT&T's facilities. Shortfall is just the opposite –it is not using service.

If AT&T wanted its fraudulent use to also include Non-Use it is must explicitly state so. AT&T suspecting that sometime years into the future that AT&T is going to be deprived of collecting on a revenue commitment does not constitute fraudulent use.

The FCC said the same regarding fraudulent use to the DC Circuit:

FCC July 2, 2004 Brief to DC Circuit pg. 13-14: **HERE AS EXHIBIT D**

> "The Commission also reasonably concluded that, **even if** the requested movement of traffic between CCI and PSE would violate the "fraudulent use" provisions of AT&T's tariff (**a question the agency found it unnecessary to decide**), AT&T's refusal to move traffic from CCI to PSE was not authorized

> under the tariff's "temporary suspen[sion of] service" remedy upon which AT&T relied below. That ruling was more than justified, particularly given the requirement of 47 CFR 61.2 that tariff provisions be "**clear and explicit**" and this Court's holding that the FCC may decline to enforce tariff provisions against customers for failure to comply with that provision, Global NAPS, Inc 247 F.3d at 258."

FCC Pg. 10 fn 65: The FCC speaking about the Fraudulent Use Provision:

> To quote the district court, "Words mean what they say. Rules should not be changed in the middle of the game; and certainly not without notice." *First District Court Opinion* at 21.

32) The Commission said that if it were to decide if fraudulent use could be used to prevent a 2.1.8 transfer it would no doubt find that tariff must be explicit and use is not non-use and thus 2.2.4 does not prohibit 2.1.8.

A shortfall by definition means that an amount of service was not rendered. Shortfall in reality is a penalty and unless clearly justified by economic necessity not favored by the law or communications policy.

Shortfalls, unregulated lead to windfalls, unjust enrichment and anti-competitive consequences. Shortfalls require payment of charges for services not rendered and are the antithesis of reasonable practices and patent examples of undue discrimination. [8]

33) **HERE AS EXHIBIT C** AT&T added provisions for failure to meet non-rendered shortfall within section 2.1.8 in 1996 and 1997 AT&T clearly understood that its Fraudulent Use section in Jan of 1995 did not apply to section 2.1.8. Common sense if Fraudulent Use applied to 2.1.8 in Jan of 1995 AT&T would not have found it necessary to add conditions to section 2.1.8 to address shortfall.

34) The FCC's R. L. Smith was involved in AT&T's Tr. 8179 and Tr. 9229 tariff modifications due to AT&T's concession that its AT&T's fraudulent use provision did prohibit 2.1.8 transfers. Mr. Smith speaking about AT&T's fraudulent Use section does not apply to Transfers or Assignments: **HERE AS EXHIBIT J** is the R.L Smith FOIA Notes.

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[8] Remember the CT-516 commitment was a $4.8 million commitment to obtain 66% discount. Plaintiffs revenue commitments were over about $33 million and provided AT&T with $54.6 million in revenue in Jan 1995 and plaintiffs only received a 28% discount. Therefore AT&T can't claim that it would be equitable to charge such penalties even if warranted to maintain equity in the marketplace so as not to discriminate by giving one customer a better rate than another.

Thinking my company was a direct AT&T customer and not an aggregator, AT&T account representative Mr. Slifka offered my Company a 51.3% discount with a monthly bill of $200 a month. My own business doing $200 a month in billing was entitled to a discount nearly twice what my aggregator Companies doing $100 million per year in billing actually received as an aggregator – 28%. Such discriminatory discounting undercuts any argument AT&T would make that aggregators were rightfully subjected to shortfall charges because of the more favorable discount rates aggregators were provided.

> Finally the provisions noted by AT&T here **do not seemingly restrict TorA** (Transfer or Assignment) per se but the new regs do, nor does it address TorA explicitly.

R.L SMITH:

> Finally the provisions noted by AT&T here **do not seemingly restrict TorA** (Transfer or Assignment) per se but the new regs do, nor does it address TorA explicitly.

35) R.L Smith notes that AT&T's fraudulent use defense was incredibly predicated on suspecting being deprived of shortfall of revenue commitment which by definition means AT&T is looking to get paid for charges in which it never renders service for and would be a windfall of profit:

> "Do we need to save AT&T from commitments per se? **Why not just loss of pay for charges.** If the moved locations are still with AT&T, they may well generate enough money to keep AT&T almost whole and **not cause the need for this intrusive method of protection."** **EXHIBIT J**

36) Mr. Smith understood the fraudulent use section did not apply to transfer of service and not to shortfall commitments.

Joseph Kearney spent over 20 years with AT&T and was familiar with AT&T's fraudulent use section having gone through numerous classes on AT&T's tariff.

Here as Exhibit E was the letter Joseph Kearney provided and stated as the FCC's R.L. Smith stated that AT&T's 2.2.4 fraudulent use section does not apply to transfer of service:

> The section of the tariff referencing theft of WATS through fraudulent means does not apply. Theft of WATS **deals with stealing service and no service was stolen.** The same customers paid AT&T; therefore AT&T's claim that there is a theft of WATS is specious.
> ……
> The FCC should not allow AT&T to hold claim on all aggregators' businesses under the **specious claim they were being defrauded.** AT&T is blaming the victim. There are no more AT&T aggregators. We didn't decide to cease our profitable small businesses; we were victims of a predatory AT&T through its obfuscatious and arbitrary tariffs and their interpretations du jour.

37) Furthermore AT&T has never provided evidence showing that it had ever used the fraudulent use provision to prohibit a transfer of service transaction. Section 2.2.4 simply does not apply to suspecting that in the future a customer will not be able to meet revenue commitments. That is what AT&T's deposits provision was for.

C) AT&T Abandoned the fraudulent use defense before Judge Bassler in favor of the new "all obligations" fraud. AT&T no longer asserted that CCI must keep its plan commitments and thus no longer had reason to suspect CCI would have deprived AT&T on meeting those plan commitments. Fraudulent use thus became a **non-controversy** post DC Circuit.

AT&T's February 1st 2016 Comments to FCC page 6:

> "The issue pending before the Commission is the scope of Section 2.1.8, **not Section 2.2.4**."

D) The DC Circuit and the FCC have both stated that the DC Circuit Decision is **not** a remand which means by definition there are no open issues. Since the fraudulent use defense was **not remanded** it is considered closed and therefore would not fit into the definition of what an "open issue" is within Judge Bassler's: "as well as any other issues left open" statement. Judge Bassler was simply wanted the FCC to interpret all it could. However the FCC 2003 Decision at fn. 87 and fn 94 stated that other plaintiff claims such as: discrimination, unreasonable practices and the duration of the June 17th 1994 exemption from shortfalls/termination penalties must all be handled by the NJFDC.

E) Determined Meritless to begin with by Judge Politan in 1996 and the FCC in 2003 as the CCI plans were pre June 17th 1994 shortfall and termination charges immune.

March 1996 Decision Page 16 para 1:

> **The Court finds nothing in the Tariff F.C.C. No. 2 which prevents fractionalization**,

FCC ---The plans were ordered prior to June 17th 1994. FCC Decision pg. 2 para 2:

> "**Prior to June 17, 1994**, the Inga Companies completed and signed AT&T's "Network Services Commitment Form" for WATS under AT&T's Customer Specific Term Plan II (CSTP II), a tariffed plan, which offered volume discounts off AT&T's regular tariffed rates."

38) The FCC in 1995 rejected AT&T's proposal of Tr8179 **(EXHIBIT K)** which AT&T attempted to subjectively decide how much traffic could transfer before it mandated the plans must transfer in or to transfer the revenue and time commitment. The FCC rejecting Tr8179 was telling AT&T that it can't be in the position where it was subjectively determining fraudulent intent. **Here as Exhibit L line 5** is AT&T Counsel Carpenter advising The Third Circuit that the FCC understood that it was not implicit in 2.1.8 that it could force CCI to transfer its plan in order to force CCI to transfer the plan commitments (revenue and time commitments).

39) Determining intent is why AT&T counsel Mr Meade certified to Judge Politan that the FCC had a problem with AT&T's filing of Tr8179 in assessing fraudulent use (section 2.2.4) to stop a 2.1.8 traffic only transfer.

Mr Meade explained that the new tariff change did not subjectively measure intent and it would be a prospective filing; thus CCI would not have to put up a security deposit against potential shortfalls charges:

Meade certification See pg.7 para 15:

> "On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the **CCI-PSE** transfer--- **the segregation of assets (locations) from liabilities (plan commitments)** **---** in the following manner.

Meade certification to Judge Politan pg.7 para 16

> The Deposit for Shortfall Charges included in Transmittal No. 9229 is a **"new concept"** that meets **AT&T's business concern** more directly, **without addressing the question of intent.** Because this is **new,** it will apply only to newly ordered term plans, and so would **not be determinative** of the issue presented on the **CCI/PSE transfer**.

F) The traffic could be taken back from PSE to CCI within 30 days to meet commitments without having to restructure the contracts---so obviously the intent was to meet CCI's plan commitments.

FCC Pg. 7 fn 50:

> CCI and PSE did agree that the traffic could be returned to CCI upon **30 days** written notice from CCI that AT&T required CCI to meet its commitments. *See* Exhibit G to Petition. Accordingly, at least theoretically, the traffic might have been returned to CCI at some point to enable it to meet any CSTP II obligations.

G) Fraudulent Use is a fact based issue that is decided by the District Court not a tariff interpretation by the FCC. The NJFDC must first decide if the fraudulent use defense 2.2.4 can be applied against 2.1.8 and then if it passes that unsurmountable test then decide an even more unsurmountable test as to whether there is merit. AT&T counsels conceded that the plans were pre June 17th 1994 immune at the time of the Jan 1995 CCI –PSE traffic only transfer.

40) The FCC's AT&T tariff expert R.L Smith's FOIA notes that were made February 21, **1995** to FCC's case manager Judith Nitche. R.L Smith commenting on AT&T's fraudulent Use claim is a fact based judgment call that can't be handled by the FCC in a declaratory ruling forum. **The NJFDC already decided it by March 1996. HERE AS EXHIBIT J** is the R.L Smith FOIA Notes.

> Two things to keep in mind about this one. First it indicates intent to and that is a **judgment call** which would have to be decided in a complaint

case if the matter came up…..'**it does not even take intent into account but assumes it is there"**

The DC Circuit Judge Ginsburg understood the plans were immune but the FCC advised Judge Ginsburg that the did not rule on the pre June 17th 1994 exemption provision that grandfathers CCI's plans from shortfall and termination penalties. The DC Circuit obviously believed that you really can't evaluate being deprived of shortfall commitments (fraudulent use) without considering whether there would be shortfall commitments.

DC Circuit (Pg. 27 Line 2):

> MR. BOURNE: Well, CCI still had the obligation to pay its shortfall charges, and there's, there are **other aspects to this** that the **Commission didn't rule on.** I mean, for instance --
> JUDGE GINSBURG: Whether they were **grandfathered?**
> MR. BOURNE: **Right.** So it could well be that there were little or **no shortfall charges**.

41) Even if the FCC had ruled that AT&T's tariff allowed AT&T to rely upon fraudulent use 2.2.4 to deny a 2.1.8 traffic only transfer---the District Court has already determined in 1996 that AT&T's fraudulent use defense which was "premised on suspecting shortfalls was not properly substantiated by AT&T". Simply AT&T's fraudulent use defense had no merit to begin with and that NJFDC decision trumps any FCC ruling that AT&T could have used its 2.2.4 section to deny the permissible 2.1.8 CCI-PSE transfer. Any additional litigation if necessary on fraudulent use **must be done by the NJFDC** as it is a fact based issue (a judgment call as RL Smith correctly noted) that would trump a tariff interpretation as to whether AT&T used an illegal remedy in applying fraudulent use.

H) AT&T never met the 15 days Statute of limitations to raise fraudulent use in the first place.

I) The FCC has Already Ruled that Plaintiffs Could Assign Accounts When It advised AT&T that it Would Reject Tr8179. Tr 8179 Proposal HERE AS EXHIBIT K

The fact that AT&T first filed Tr8179 and then filed Tr9229 was a concession that AT&T understood it could not rely upon its 2.2.4 fraudulent use provision to deny substantial 2.1.8 traffic only transfers.

42) AT&T submitted its Transmittal # 8179 to stop substantial traffic only transfers. When the FCC would not allow AT&T to put their changes in retroactively AT&T pulled the transmittal from the FCC so AT&T would not get an adverse decision. If AT&T had accepted the transmittal with the grandfathering provision in it, AT&T knew it would have further justified plaintiffs account assignments, because plaintiffs Jan 13th 1995 CCI-PSE transfer was prior to AT&T's February 16th 1995 Substantive Cause Pleading for Tr8179. If the Tr9229 filing went

into effect plaintiffs would have been grandfathered. AT&T instead replaced Tr8179 with Tr9229 (security deposits against potential shortfall).

43) AT&T told the Federal District Court that the exact issue that was before the court was before the FCC in Tr8179. So this issue has already been resolved in plaintiffs favor. AT&T would never have attempted to file that transmittal for tariff change on account assignments if it really thought it could rely on other tariff sections.

J) The CCI plans had already met its revenue commitment by over 3 months so the accounts could be moved without having to restructure the plans and plaintiffs could get the traffic back within 30 days.

K) Here as Exhibit B is the FCC Oct 23, 1995 Order. It mandated that AT&T adhere to the June 17th 1994 exemption and section 2.1.8 as AT&T was criticized by resellers for violating these tariff provisions. To obtain non-dominant carrier status conditions were imposed upon AT&T that were "**designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere."** This FCC Order was prior to the March 1996 NJFDC Decision. So AT&T already knew had its primary jurisdiction forum before AT&T ran to the Third Circuit and yelled primary jurisdiction. Judge Politan determined AT&T's fraudulent use defense was meritless even without knowledge of the FCC Oct 23rd 1995 Order. Judge Politan nor the FCC or DC Circuit was presented with this evidence.

L) AT&T settled with co-plaintiff CCI and AT&T did not pursue CCI for the $80 million in shortfall charges that **it claimed constituted its basis for its fraudulent use defense,** and on top of that it also paid CCI **substantial cash**! It is discriminatory for AT&T to claim that CCI did not engage in fraudulent use but the Inga Companies did on the same exact transaction. AT&T simply knew its sole defense of fraudulent use was totally bogus and paid substantial cash due to AT&T's tariff violations.

M) In order to bolster its fraudulent use defense AT&T counsel wrote a certification from AT&T account manager Joseph Fitzpatrick that Mr. Fitzpatrick later claimed AT&T twisted his words. Mr Fitzpatrick certification claimed that Mr Inga said he was going out of business. What was actually said was AT&T is forcing plaintiffs out of business because it is not providing plaintiffs a contract tariff like PSE that plaintiffs qualify for. This is the same Mr. Fitzpatrick that in a recorded conversation claimed the plans would never have shortfall if timely restructured.

N) There was no way to comply to fraudulent use by transferring less as AT&T totally shut down 2.1.8 to all traffic only transfers as stated in the fax sent to plaintiffs by AT&T's order processing manager Joyce Suek. As Judge Politan and the FCC's R.L Smith stated AT&T's costs are actually 100% covered by PSE. So how much can be transferred without AT&T **merely suspecting** that it is going to be deprived of not collecting payment for **non-rendered service**, i.e. shortfall?

44) At what point does AT&T subjectively suspect intent that it is it not fraudulent use when how much traffic is transferred: 70%, 50%, 40%, 33.8%, 1% of the revenue can get transferred without being "suspected" of fraudulent use? The plans were pre June 17th 1994 grandfathered

there was zero reason to suspect shortfall. The Fraudulent use provision as R.L Smith noted has to do with actual theft of service------it was not intended to allow AT&T to subjectively suspect that AT&T may be years in the future deprived of non-rendered service i.e. shortfall of the revenue commitment. It was never contemplated by AT&T that the fraudulent use section could ever be used to stop a traffic only transfer between two AT&T customers as AT&T's costs are covered. AT&T used an illegal remedy by totally shutting down traffic only transfers under section 2.1.8 so there was no way to comply by transferring less traffic.

O) Plaintiffs did traffic only transfers to other plans **prior** to the CCI-PSE transfer. If according to AT&T all the obligations were transferred away then AT&T can't make a claim that that CCI would deprive AT&T from collecting shortfalls as CCI's plans no longer had any plan commitments left as of the Jan 13th 1995 CCI-PSE traffic only transfer.

P) No Scheme: Plaintiff's 2.1.8 transaction hid nothing. It was a direct bulk transfer without hiding anything which obviously indicates no scheme involved. A typical scheme would be one in which the party perpetrating a scheme does it in a manner that AT&T would not be alerted and this was not the case.

Q) PSE and Plaintiffs used AT&T's Enhanced Billing Option (EBO) which means AT&T did the billing to the end-users and **AT&T would pay the aggregator**. So the plan earned 28% discount and the end-users received 15% and AT&T would pay the 13% difference. If plaintiffs were looking to do a scheme on AT&T how would this scheme actually get accomplished when AT&T controlled the payments? AT&T simply would not pay the aggregator if there was a scheme. For example Plaintiffs had many plans and only one plan AT&T unlawfully applied shortfall charges in June of 1996. AT&T withheld payment on **all plans** and put plaintiffs out of business.

R) Plaintiffs plans had an excellent crediting rating due to 5 years of service with AT&T. The credit rating enabled plaintiffs to subscribe to larger and larger commitments to obtain signing bonuses. If the CCI-PSE transaction was an actual scheme it would ruin plaintiff's credit rating and prevent obtaining new plans with bonuses and force plaintiffs to put up many millions in security deposits.

S) Further Evidence to Support AT&T Understood Prior to the CCI-PSE transfer that the Plans were Immune from the Shortfall Claims that AT&T justified in relying upon its Fraudulent Use Provision:

45) Pursuant to a court order issued in this litigation **AT&T received a copy of all these taped conversations.** Many of these taped conversations were presented to the court in the form of citations to their content in briefs and affidavits submitted to the court. Although AT&T has had copies of these tapes since 1996 or before, it has not refuted them or attempted to contradict them in anyway. It is submitted that these tapes provide competent evidence of how AT&T's own staff interpreted and applied AT&T's tariff in the marketplace. When AT&T's relevant tariff provisions are clear they support the positions my Companies asserted in favor of the manner in

which AT&T's services were being aggregated and offered through that aggregation to the using public at attractive discounts.

46) With this background, the following statements by AT&T's own managers and employees are relevant to the issues in this proceeding:

Tape 1 Side B Tom Umholtz (Senior Account Manager):
"Restructuring definitely allows you to NOT pay the penalty."

Tape 7 Side A Joe Fitzpatrick (Direct Account Manager):
"[You] can restructure forever with no penalties as long as the RVPPID stays the same, you will always be a pre-17th plan." (Emphasis added.)
Also, "You can TSA just accounts not the plan."

Tape 13 Side A& B Joe Fitzpatrick:
"You can assign accounts from plan to plan."
Also: "Restructuring to avoid shortfalls can be done."

Tape 14 Debra Kibby (Account Provisioning Manager):
"Restructuring is not a new plan, this has always been like this in the tariff."

Tape 15 Side A Joyce Suek & Lisa Hockert (Account Provisioning Managers):
" Restructures are not new plans."

Tape 15 Side B Joyce Suek:
"Plan ID remains pre-June 17th, 1994 even after restructures."

Tape 19 Side A Cheryl Baldwin (AT&T Collections Manager):
This tape contains a discussion that demonstrates that individual accounts can be assigned without the plan itself moving. Assignment of accounts requires no deposits of the aggregator.

Tape 22 Side A Joyce Suek:
"Need a brand new CSTP plan with a brand new RVPP ID to acquire term contracts of AT&T customers to the aggregator plan".

Tape 22 Side A Joe Fitzpatrick:
"Work procedure issued from AT&T product house that restructures are not new plans."

Tape 23 Side A Janis Bina (Credit and Collections Manager):
"Restructures are not new plans"

Tape 23 Side A Maria Nascimiento (AT&T Manager):
"You will get paid on back end of promos, therefore the restructures have to be considered not new. If they were new then you wouldn't get paid."

Tape 25 Side B Greg Brown (AT&T National branch manager overseeing all resale and aggregation): "Restructures allow the aggregator to keep lowering commitment downward to avoid shortfall."

Tape 27 Side A Tom Freeberg (AT&T Provisioning Branch Manager overseeing all aggregators):"Restructures are not new plans because it is not an expiration of a contract. You would have to take out a new plan with a brand new RVPP ID to enroll AT&T users who are under contract."

Tape 27 Side A Ron Orem (AT&T National Division Manager Head of Specialized Markets): In a conversation regarding AT&T's reinterpretation of their tariff saying that restructures are now considered new, but without AT&T's having filed a tariff revision with the Commission to change these terms, Mr. Orem admits that - "Giving you [the undersigned] an advanced warning would have made a lot of sense."

Tape 27 Side A Lisa Hockert:
"Bottom line, a restructure is not a new plan period!"

Tape 27 Maria Nascimento:
"AT&T is standing by the tariff that restructured contracts were not new plans."

Tape 27 Side B Maria Nasciemento:
"Our attorneys now didn't support what we have been doing all along that restructures were not new plans."

Tape 28 Maria Nasciemento:
"I explained to Maria that AT&T was forcing me to assign all my accounts because they were not providing me a contract tariff."

Tape 28 Side A Joyce Suek:
"Post plans are ordered <u>new</u> only after June 17th 1994."

Tape 30 Side A Maria Nasciemento & Joseph Fitzpatrick:
"New plan means brand new, the plan ID was never in existence before

Tape 31 Side A Joe Fitzpatrick and Marie Nasciemento:
On this tape a discussions is recorded about a special promotion promo that paid a bonus on a new plan. AT&T denied the Companies the bonus on a restructured plan at the time claiming in direct contradiction of itself that the plan was not considered new and hence not entitled to the bonus.

Tape 33 Side A Andrea Anton (Combined Companies, my former co-plaintiff's account manager):"Pre June 17th plans are always pre-June 17th plans even after restructuring!"
Based upon these taped conversations, and hundreds of others, and my constant interaction with fellow aggregators, this is how these tariff interpretations played out in the marketplace.

T) Tariffed Reasons Why Restructured Plans Did Not Become Post June 17th 1994 plan and Continued to be Exempt from Shortfall Charges and Thus AT&T Knew Its Fraudulent Use Assertion was Bogus:

47) June 17th 1994 Substantive Cause Pleading: AT&T attempted to retroactively add the pre June 17th 1994 exemption language when in a Substantive Cause Pleading that went on for many months as several petitions to reject were filed. If a CSTP II RVPP plan became a post June 17th plan upon restructuring AT&T wouldn't have needed to argue for months to make it retroactive; the plans would have automatically become post plans when restructured. AT&T knew that these plans would always be protected from shortfall penalties when timely restructured before the fiscal year end true-up dates.

48) The tariff mandates that you must take a RVPP discount plan ID when subscribing to the CSTPII plan. Plans that were newly taken out and assigned a new RVPP ID by AT&T after June 17th 1994 had to always meet pro rata commitments if the customer wished to restructure their existing plan before the end of a fiscal year.

49) Payment of Promotional Money: AT&T ran promos and paid a signing bonus to newly issued RVPP ID plans if it was a new plan. AT&T would not pay if it was a restructured plan where the RVPP ID was already in existence, unless the promo allowed it. AT&T stressed that these were not new plans. They said that even though the plan is beginning a new 3 year period, it was not considered a new plan; it was considered an old RVPP ID plan. AT&T had a name for this situation. It was called a TASD plan, pronounced "TAS." It stood for a new TERM ASSUMPTION STARTING DATE (TASD). The old plan stayed in effect.

AT&T asserted the plans would become new plans to make them post June 17th 1994 plans, but at the same time, AT&T asserted the plans were not new so plaintiffs couldn't take advantage of certain promo offerings and the ability to sign up end-users who were on AT&T term contracts. AT&T wanted the advantage both ways. The plans were both OLD and NEW.

50) Payment of Back End Promotional Monies Proper On Restructuring as Plans are NOT New. AT&T ran several promotions that plaintiff's enrolled for. Best in the Business, Winter, Spring, Summer, and Fall Promos, Fitness Promo, Silver Anniversary Promo and more. These promos had a front end signing bonus and a backend 13th month bonus. The tariff was very clear that the back end money would not get paid if the plan was no longer in effect. AT&T did pay the back end promos when the plans were restructured prior to the 13th month because the restructures are NOT considered new plans. The plans maintain the existing terms and conditions.

51) Enrolling End-User LSTP Contracts without Penalty, Not Allowed when Restructuring. The tariff **(Here as EXHIBIT P)** is very clear that end-users who were under term contracts with AT&T, called Location Specific Term Plans (LSTP's), could leave their contracts with NO penalty if the aggregator was willing to take on their volume commitment into the aggregators (CSTPII/RVPP). AT&T ONLY allowed this if the aggregator was taking out a NEW Plan with AT&T not a restructured one. Therefore confirmed restructured contracts are not considered new

plans and thus the plan does not lose its grandfathered status as it retains the former terms and conditions.

The FCC's 2007 Order Denies Judge Bassler's 2006 Section 2.1.8 Obligations Controversy as Not Expanding the Scope of the Original Third Circuit Referral on Fraudulent Use

52) AT&T was able to intentionally mislead Judge Bassler but was not successful trying its 2006 created "all obligations" scam on the FCC in 2007. The FCC's case manager Deena Shetler wrote the FCC order and it was issued on Jan 12th 2007. FCC2007 Order: (pg. 2 para 3)

> "As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to **terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to **assist the referring court** by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does not expand the scope of the issue previously presented. Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No. 2, a matter already extensively briefed by the parties.**

53) The original 1995 controversy that the FCC was asked to interpret was of course AT&T's sole defense of 2.2.4 fraudulent use that became a non-controversy by March 1996. The FCC was advising the District Court that section 2.1.8 is a matter already extensively briefed by the parties" and there was no controversy or uncertainty in 1995 under 2.1.8. The parties agreed in 1995 that 2.1.8 allowed traffic only transfers and CCI was required to keep its revenue and time commitment and be responsible for shortfall and termination liabilities. The FCC was advising the FCC that any controversy regarding 2.1.8 was a new controversy that did not expand the scope of the fraudulent use controversy. Section 2.1.8 is not within the scope of the Third Circuit Referral. Even if it was it would be considered moot. [9]

54) The Third Circuit referred the FCC with the 1995 controversy of Fraudulent use. However the March 1996 Judge Politan Decision is overwhelmingly explicit that fraudulent use was no longer a controversy by March 1996.

55) Under the Administrative Procedure Act the Commission decides whether a declaratory ruling is necessary to **terminate a controversy or remove uncertainty.** The only controversy or uncertainty was in 1995 of fraudulent use (2.2.4) not any issues under (2.1.8) and the 2.2.4 fraudulent use defense was determined meritless by Judge Politan based upon the facts of the case.

[9] Even if the FCC were to change the terms and conditions under 2.1.8 and decide that revenue and time commitments must transfer on a traffic only transfer, it would be a prospective tariff change and the CCI-PSE traffic only transfer would be grandfathered.

56) The FCC obviously understood that AT&T was not arguing to Judge Bassler in 2006 that under 2.2.4 fraudulent use CCI must **keep** its plan commitments (revenue and time commitments) when AT&T was asserting in 2006 that under its all obligations scam that CCI **must transfer** those plan commitments.

57) The FCC's 2007 position is that AT&T's February 1st 2016 statement that the "scope of the case is 2.1.8 and not 2.2.4" is a flat out wrong. The FCC understood the scope of the case was the 2.2.4., controversy in 1995 but it became moot by the March 1996 decision and it was a fact based issue anyway.

58) If the scope of the case was 2.1.8 the DC Circuit would not have stated that determining obligation allocation under 2.1.8 was "**beyond the scope of our opinion"** (Supra pg.8) The position of the FCC 2007 Order was that there was no CCI-PSE 1995 controversy (i.e. AT&T defense) before the FCC regarding obligation allocation under 2.1.8 and thus the FCC did not need to interpret obligation allocation. AT&T of course outlined for Judge Politan in 1995 that CCI must keep its revenue and time commitment on a traffic only transfer. Only plan transfers like the Inga Companies to CCI plan transfer required the revenue and time commitment to also transfer. The reason AT&T misrepresented that the CCI-PSE transfer was a plan transfer and not a traffic only transfer was AT&T understood there was a difference between which obligations transfer between the two types of transfers. Section 2.1.8 has no sliding scale as to which obligations transfer based upon how much traffic is transferred. It's either your pregnant or not pregnant. It is not horseshoes where close enough counts. As AT&T counsel Mr. Whitmer states (supra pg. 1) if the (home account/lead account) remains with the plan "**the shortfall and termination liabilities remain**" with plaintiffs plan and not transferred to PSE.

59) The FCC understands AT&T has abandoned its fraudulent use defense as it can't simultaneously argue fraudulent use (CCI Keeps plan obligations) and argue "all obligations" transfer that means CCI must transfer plan obligations. That would make absolutely no sense at all. A defendant can have numerous defenses; however they all need to be based upon a fundamental set of facts asserted. In other words AT&T can't argue that under its tariff that "the former customer" both keeps and transfers its revenue and time commitments.

60) What the Judge Bassler referral may have wanted referred are other claims of plaintiffs (discrimination, unreasonable practices and the June 17th 1994 exemption, illegal billing, and section 2.5.7 extension of time etc.) But the FCC 2003 Decision states at fn. 87 and 94 that these claims must be handled by the District Court.

CONCLUSION
All Controversies Resolved

I) **Account Movement Under 2.1.8:**

DC Circuit pg. 5 para 2.

> The specific question referred to the FCC was "whether section 2.1.8 permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction."

61) Yes. The key part of the Judge Bassler referral in 2006 is the Judge Bassler question itself determined that there is was **no controversy or uncertainty** between the parties that 2.1.8 was a tariff section that allowed traffic only to transfer without the plan. Both parties before Judge Bassler confirmed 2.1.8 has always been agreed upon by the parties since 1995 that 2.1.8 allows bilateral traffic only transfers.

62) The FCC originally did not see that 2.1.8 allowed traffic only to transfer as it did not recognize the "any number" language in 2.1.8. The FCC 2007 Order accepted the DC Circuits finding that 2.1.8 allowed traffic only to transfer. FCC 2007 Order pg. 2 para 2:

> In its Order on Primary Jurisdiction Referral, the FCC initially concluded that section 2.1.8 did not apply to transfers of traffic alone. The United States Court of Appeals for the District of Columbia Circuit, however, found that conclusion to be incorrect.

63) The FCC did recognize that traffic only can transfer without the plan by CCI simply deleting accounts and PSE adding accounts. This is also an acceptable way to move accounts and AT&T's own counsel Charles Fash stated this method was also permissible. Under either transfer method, CCI as AT&T's customer of Record keeps its revenue or time commitment. The fact that the FCC now understands there is no controversy or uncertainty that 2.1.8 allows traffic only transfers means the FCC does not need to rule on this.

II) **Obligation Allocation under 2.1.8:**

64) The FCC 2007 Order determined that the 2006 created obligations allocation controversy referred by Judge Bassler in 2006 "did not expand the scope" of the Third Circuit referral on fraudulent use. The parties agreed in 1995 when AT&T was asserting its meritless fraudulent use defense that CCI must keep its revenue and time commits. The FCC was basically saying that AT&T can't create a new controversy in **2006** as justification why it denied the CCI-PSE traffic only transfer of Jan 13th **1995**. Therefore obligations allocation is not a controversy that needs to be interpreted.

III) **Fraudulent Use:** All the reasons supra pgs. 12-22 reasons A through T why fraudulent use does not apply and even if it did would be meritless and is a fact issue that the NJFDC must

handle if the NJFDC doesn't simply decide that Judge Politan's 1996 position is the Law of the Case as Judge Politan stated in his Courts' March 1996 Decision Page 16 para 1:

> The Court finds nothing in the Tariff F.C.C. No. 2 which prevents fractionalization

Given the fact that the only defense in 1995 was fraudulent use under 2.2.4 and that was resolved by March 1996 and is a disputed fact, the FCC must defer to the NJFDC on all disputed facts.

The FCC case is absolutely moot.

Very truly yours,

Raymond A. Grimes

CC: Client
CC: FCC

EXHIBIT A

the original); Exhibit B (informing end users that when they buy from an aggregator [such as Petitioners] they are not customers of AT&T but rather customers of the aggregator; that aggregators "are not agents or employed by AT&T"). Petitioners also concede that the *liability* for all charges incurred by each location under the plan was solely that of Petitioners, not the end-users. Petitioners' Comments at 7, ¶ 11 (while AT&T did the billing, the aggregator set the rate and the aggregator was liable to the extent that the end user did not pay), ¶ 12 (although AT&T did the billing, "service on the account was done solely by the aggregator"); ¶ 13 (the end user was the "aggregator's customer") and at 8, ¶ 14 (after discussing the billing by AT&T, referred to the "lack of any customer relationship between AT&T and the aggregator's end user.") *see also* at 26, ¶ 79.

The undisputed record thus requires the Commission to deny Petitioners' request for declaratory relief. As AT&T's customers-of-record, the Petitioners were <<<<< responsible for the tariffed shortfall and termination charges.[3] Moreover, as AT&T has already demonstrated, as AT&T's customers-of-record Petitioners were precluded under the governing tariff from transferring their CSTP II Plans to PSE unless PSE agreed to assume all of Petitioner's obligations under those same plans, including tariffed shortfall and termination charges.[4] There is no merit to Petitioners' contention that, because it had no relationship with the end users, AT&T was precluded from having any "say, either by

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[3] Section 3.3.1.Q of AT&T Tariff F.C.C. No. 2; *see also*, AT&T Corp. Further Comments, filed April 2, 2003 ("AT&T's 2003 Further Comments") at 7-8.

[4] Sections 2.1.8.B of AT&T Tariff F.C.C. No. 2; *see also*, Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration, filed August 26, 1996 ("AT&T's 1996 Initial Comments") at 10-11.

AT&T's Position: CCI on a TRAFFIC ONLY transfer is responsible for shortfall and termination. Then AT&T states if CCI transferred the PLAN to PSE the revenue and time commitment would transfer and PSE would be responsible for potential shortfall/termination

EXHIBIT B

The FCC 1995 Order

Relevant Excerpts of the FCC 1995 Order and its Effect on Plaintiffs Case

133. Certain commenters raise issues implicating the "substantial cause" test. The "substantial cause" test holds that tariff revisions altering material terms and conditions of along-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions. In response to concerns of IBM and API that AT&T be required to justify any changes to contract-based tariffs, we note that we recently affirmed the applicability of the "substantial cause" test to tariff revisions that alter material terms and conditions of a long-term contract, and we clarified that this test applies to any unilateral tariff modification by non-dominant as well as dominant carriers. Accordingly, if AT&T files a modification to a contract-based tariff, we will take into account that the original tariff terms were the product of negotiation and mutual agreement, and we will consider on a case-by-case basis, in light of all the relevant circumstances, whether a substantial cause showing has been made. We will apply the substantial cause test in this way in any post-effective tariff investigation, pursuant to Section 205, and in complaint proceedings. We also will consider, on a case-by-case basis, whether to allow customers to terminate contracts without liability.

134. Finally, we note that **AT&T has voluntarily committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere.** AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and AT&T has committed to comply with this agreement:

As a general practice, **AT&T grandfathers both existing customers and subscribed customers** (i.e., customers who have submitted a signed order for service) when it introduces a change to a term plan (including Contract Tariffs, term plans under Tariffs 1, **2**, 9, and 11, Tariff 12 Options and Tariff 15 CPPs), and **it commits to continue that process**. In exceptional cases, however, grandfathering may not be appropriate either because: (1) a change is necessitated by typographical errors, a service inadvertently priced below costs, rate changes where no individual rates (post-discount) are increased, or other comparable circumstances, or (2) the change is necessary to bring clarity to a non- rate term or condition, where it is necessary to treat all customers alike (such as a change to the provisions for how orders are processed, but not including changes to the body of Contract Tariffs, Tariff 12 Options or Tariff 15 CPPs). In such circumstances, AT&T commits for a twelve-month period to **offer its customers the following additional protections** not required of non-dominant carriers: - where AT&T makes any change to an existing term plan, AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, **however, that for changes to discontinuance with or without liability**, deposits and advance payments, **or transfer or assignment of service, AT&T will file on 14-days' notice.** (AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.) Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice. **Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice. With respect to the 14 or 6 days notice filings, the substantial cause test will be applicable to the same extent as it is today.**

135. AT&T has also voluntarily committed to report to the Common Carrier Bureau and to the Telecommunications Resellers Association Executive Board, on a quarterly basis, its performance in processing reseller orders. This commitment is for a term of one year.

In addition, for at least twelve months, AT&T will provide a single point of contact to receive reseller complaints not resolved through the first point of contact, the AT&T account manager. Finally, AT&T represents that it has agreed with the Telecommunications Resellers Association to establish alternative dispute resolution procedures:

AT&T is willing to establish a quick, efficient, commercially-oriented process for resolving disputes with its reseller customers. AT&T is willing to enter into mutually agreeable private party arbitration agreements with these parties. AT&T is also willing to develop with the Telecommunications Resellers Association Executive Board a model two-way Arbitration Agreement. AT&T would be willing to enter into such an agreement with any of its reseller customers for resolution of commercial disputes between the reseller and AT&T under the following guidelines:

a) The Arbitration Agreement would be based on the United States Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association.

b) The Arbitration Agreement would bind each party to arbitration as the exclusive remedy for any covered claims that arise in the period covered by the agreement. The covered period initially would be twelve months, but the reseller will be permitted to end the covered period earlier by providing at least 30 days prior written notice.

c) Covered claims would include all claims between the parties relating to tariffed services, the carrier-customer relationship
between the parties, or competitive practices, except claims that tariff provision or practice is unlawful under the Communications Act would not be covered claims. Covered claims would include, for example, claims that AT&T has misapplied or misinterpreted its tariffs, that the customer has failed to comply with its tariff obligations, or that either party has engaged in unlawful competitive practices such as misrepresentation or disparagement.

d) The Arbitration Agreement would provide for a 90 day arbitration process, unless the parties agree to a longer period.

136. MCI argues that AT&T's commitment in its September 21, 1995 **letter to grandfather**, at its discretion, existing customers adversely affected by unilateral contract changes (permitting them to receive AT&T performance on the same terms and conditions as the original contract), or allowing them to terminate their agreements with AT&T without liability if they pay under utilization charges, is "patently anti-consumer." We note, however, that AT&T's October 5, 1995 Ex Parte Letter clearly addresses the concerns raised by MCI. **We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and we therefore order AT&T to comply with these voluntary commitments.**

137. We also note that some of the **tariff-related issues raised by commenting parties transcend the scope of this proceeding**. For example, questions concerning the application of the filed rate doctrine to contract tariffs may arise with respect to carriers other than AT&T. We intend to examine these and other questions in the context of our review of our regulatory scheme governing the interstate, domestic, interexchange industry.

EXHIBIT C

2.1.7. Limitations on the Provision of WATS (continued)

B. **Restoration of Service** - In the event of failure, WATS will be restored in compliance with Part 64, Subpart D, of the FCC's Rules and Regulations.

C. **Hazardous Locations** - An access line will not be furnished at a location the Company considers hazardous (e.g., explosive atmosphere environments). In such cases, the Company, if so requested, will terminate the access line at a mutually agreeable alternate location. The Customer will then be responsible for extension of the access line to the hazardous location.

2.1.8. Transfer or Assignment - WATS, including any associated telephone numbers, may be transferred or assigned to a New Customer, subject to each of the following provisions: Sx ..

A. The Customer of record (Current Customer) requests in writing (using a standard AT&T Transfer of Service form available from AT&T)* that AT&T transfer or assign the service to the New Customer. The standard AT&T Transfer of Service form shall not contain terms that are inconsistent with the terms of this Section, and shall not impose any obligations on the Current Customer or the New Customer other than as provided in this Section.

B. The New Customer notifies AT&T in writing (using the same Transfer of Service form signed by the Current Customer)* that it agrees to assume all obligations of the Current Customer as of the Effective Date of the transfer. These obligations include, for example: all outstanding indebtedness for the service, the unexpired portion of any applicable minimum payment period(s), the unexpired portion of any term of service and usage and/or revenue commitment(s), and any applicable shortfall or termination liability(ies). .. Sx

C. The service is not interrupted at the time the transfer or assignment is made. Sx Sx

D. The Current Customer will no longer be AT&T's Customer for the service as of the Effective Date of the transfer, which will be the earlier of the date on which AT&T provides to the New Customer a written acceptance of the transfer or assignment, or the fifteenth day after AT&T receives a fully executed original of the Transfer of Service form, except: Sx Sx Cy .. Cy

1. The transfer will not be effective if, within fifteen days after AT&T receives a fully executed original of the Transfer of Service form, AT&T provides to the New Customer a written rejection of the requested transfer. AT&T may not unreasonably reject a transfer or assignment of service. AT&T may, for example, reject a transfer or assignment of service if the Current Customer or New Customer fails to supply the executed original(s) of the Transfer of Service form, fails to adequately identify the Current Customer or the service being transferred, asks that the transfer or assignment be made subject to conditions, or fails to furnish a deposit required in connection with the intended transfer pursuant to Section 2.5.8, following. AT&T will provide a written statement of its reason(s) for rejecting a transfer or assignment of service. Ny .. .. Ny

* The requirement that the transfer or assignment be made using the standard AT&T Transfer of Service form shall apply to transfer or assignment requests made on or after July 1, 1996. Cx
Certain material previously found on this page can now be found on Page 20.1.
x Effective date of material filed under Transmittal No. 9229 is advanced to May 10, 1996 under authority of Special Permission No. 96-0468.
y Issued on not less than one day's notice under authority of Special Permission No. 96-0468.

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2.1.8.D. Transfer of Assignment (continued)

2. If, within fifteen days after AT&T receives a fully executed original of the Transfer of Service form, AT&T notifies the Current Customer or New Customer in writing that a deposit is required in connection with the intended transfer pursuant to Section 2.5.6., preceding, and the requested transfer is not otherwise rejected as provided in 1., preceding, then the Effective Date of the transfer will be the date on which the deposit is furnished, provided that the requested transfer or assignment will be deemed to be withdrawn if a required deposit is not furnished within thirty (30) days after the date the deposit request is made. Nx .. .. Nx

E. The Current Customer remains jointly and severally liable with the New Customer for any obligations existing as of the Effective Date of the transfer, except as provided in 1., following. These obligations include, for example: all outstanding indebtedness for the service, the unexpired portion of any applicable minimum payment period(s), the unexpired portion of any term of service and usage and/or revenue commitment(s), and any applicable shortfall or termination liability(ies). Mx .. .. Mx

1. If the service being transferred or assigned is subject to an AT&T term plan, flex plan, or other discount plan with revenue or volume commitments offered under this Tariff, or a Contract Tariff under which WATS is provided (a Pricing Plan), then, to the extent specified in (a) through (c) following, the Current Customer is relieved of liability for charges that may be incurred after the Effective Date of the transfer, either as a result of a failure to meet revenue or volume commitments or monitoring conditions associated with such Pricing Plan (Shortfall Charges) or as a result of the discontinuance with liability of such Pricing Plan (Termination Charges). For purposes of these provisions, a charge is incurred on the date that the events giving rise to the charge become fixed (i.e., on the last day of a commitment period or the day on which a Pricing Plan is discontinued), not on the date the charge is billed.

(a) For a Shortfall Charge incurred for a commitment period that includes the Effective Date of the transfer, the Current Customer remains jointly and severally liable with the New Customer only for a percentage of the total Shortfall Charge equal to the number of days in the commitment period prior to such Effective Date divided by the total number of days in the commitment period.

(b) For a Termination Charge incurred less than 180 days after the Effective Date of the transfer, the Former Customer remains jointly and severally liable with the New Customer only for a percentage of the total Termination Charge equal to the difference between 180 and the number of days between such Effective Date and the date on which the Termination Charge is incurred, divided by 180.

(c) For a Shortfall Charge incurred for a commitment period after the commitment period that includes the Effective Date of the transfer, or for a Termination Charge incurred at least 180 days after the Effective Date of the transfer, the Former Customer is fully relieved of liability

F. Nothing herein or elsewhere in this tariff shall give any Customer, assignee, or transferee any interest or proprietary right in any 800 Service telephone number.

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2.5. Payments and Charges (continued) 2 Different TYPES

(1)

2.5.8. Deposits - The following deposit provisions are applicable to WATS. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. When a deposit is required, AT&T will provide a written notification of the amount of the deposit and an explanation of the reason(s) for the deposit requirement. When a deposit is required in connection with an order for new service or an AT&T Pricing Plan, the Customer shall pay the deposit within the period specified by the Company, which shall be a minimum of ten (10) days after the date of the deposit notification, except as provided in Section 2.5.10, following, in connection with a Contract Tariff order. AT&T may defer installation activity while a deposit demand is pending. When a deposit is required in connection with existing service, the deposit shall be paid within 30 days after the date of the deposit notification. If the Customer refuses to pay a deposit required under this Section, AT&T may refuse to provide new service, or restrict or deny existing service for which the deposit is required. If as a result of a Customer's refusal to pay such a deposit, the existing service is ultimately disconnected, the Customer shall be liable for all applicable termination charges. In lieu of a cash deposit, the Company will accept as a deposit or as a portion of the deposit amount, irrevocable and commercially sound Bank Letters of Credit, Surety Bonds, pledges of assets as security under the Uniform Commercial Code or similar statutes, or Guarantees, or any combination of cash and these instruments. C C

A. Deposit for Recurring Charges - The Company will require a deposit from a Customer (1) who has a proven history of late payments to AT&T or (2) whose financial responsibility is not a matter of record (determined in accordance with 1., following). AT&T will hold the deposit as security for the payment of charges. The amount of this deposit will not three times the sum of the estimated average monthly usage charges and/or the monthly service charges.

1. To determine the financial responsibility of a Customer and/or the specific amount of any deposit required, AT&T will rely upon commercially reasonable factors to access and manage the risk of non-payment. These factors may include, but are not limited to, payment history for telecommunications service, the number of years in business, history of service with AT&T, bankruptcy history, current account treatment status, financial statement analysis, and commercial credit bureau rating.

(2)

B. Deposit For Shortfall Charges - The Company will require a deposit from a Customer that meets each of the elements specified in 1. through 3., following, to be held as a **guarantee for the payment of any charge that may be incurred as a result of a failure to meet revenue or volume commitments** or monitoring conditions (Shortfall Charge) under an AT&T Pricing Plan (a term plan, flex plan, or other discount plan with revenue or volume commitments offered under this Tariff, or a Contract Tariff under which WATS is provided). The amount of this deposit will not exceed the **estimated Shortfall Charge**, to be determined in accordance with the applicable tariff provisions under which such Shortfall Charges would be assessed, based on the total annualized charges or usage calculated as specified in the applicable category under 2., following. A deposit will not be required under this Section if the amount of the estimated Shortfall Charge is less than $300,000. A deposit will be required when each of the three following requirements is met:

1. The Customer has subscribed to a Pricing Plan that includes a revenue or volume commitment based on charges or usage over a period of one year or longer.

2.5.6.B. Deposit for Shortfall Charges - (Continued)

2. The Customer is in one of the following categories (a) through (c). For purposes of these determinations, if any commitment under the Pricing Plan is based on charges or usage over a period of longer than one year, the commitment will be treated as an annual commitment equal to the amount of the commitment, divided by the number of months in the commitment period, multiplied by twelve. Mx .. .. Mx

(a) AT&T has accepted the Customer's order for service under the Pricing Plan and the Customer has identified at least one location or telephone number to be served under the Pricing Plan, but the total annualized charges or usage from all such identified locations and telephone numbers are less than 50% of the annual commitments applicable during the first year of the Pricing Plan. Such total annualized charges or usage will be twelve times the greater of (i) the past month's billed usage or (ii) the average monthly billed usage during the preceding twelve months, or if billed usage information is not available for the preceding twelve months, then during the number of preceding months for which such billed usage information is available. Mx Cx .. Cx .. .. Mx

(b) The Customer has been taking service under the Pricing Plan for at least six full billing months, and the total annualized charges or usage under the Pricing Plan are less than 85% of any currently applicable annual commitment under the Pricing Plan. Such total annualized charges or usage will be twelve times the greater of (i) the past month's billed charges or usage or (ii) the average monthly billed charges or usage during the preceding twelve months, or if billed usage information is not available for the preceding twelve months, then during the number of preceding months for which such billed usage information is available. Cx Cx Cx Cx

(c) The Customer has requested that **AT&T remove specified locations or telephone numbers from the Pricing Plan**, and the total annualized charges or usage from the locations or **telephone numbers that would remain under the Pricing Plan** are less than 50% (during the first six full billing months of the term of the Pricing Plan), or 85% (after the sixth full billing month of the term of the Pricing Plan), **of any currently applicable commitment under the Pricing Plan**. Such total annualized charges or usage will be determined using the same methodology as specified in (b), preceding. Cx Cx

3. The Customer's net assets (based on a review of an audited financial statement, if available, and other information available to AT&T) are less than three times the amount of its total commitments to AT&T under tariffed service arrangements, or the Customer's financial responsibility is not a matter of record (determined in accordance with A.1., preceding).

C. **Interest on a Cash Deposit** - Interest will be paid to a Customer for the period that a cash deposit is held by AT&T.

Plaintiffs note: Obligations remain on the former customers plan as end-user locations are removed. AT&T covered itself whether accounts were either transferred away via 2.1.8 or deleted from plan via 3.3.1.Q. This was the (Tr.9229) outcome of the AT&T Counsel Meade certification to Judge Politan as to what AT&T was going to do in the future for large traffic only transfers. Make the former customer that had to keep the customer plan commitments post deposits against shortfall. This did not affect plaintiff's CCI-PSE transfer because as normal it was a tariff change that of course was prospective.

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EXHIBIT D

where they are clearly erroneous. *Global NAPS, Inc.*, 247 F.3d at 258; *Capital Network System, Inc. v. FCC*, 28 F.3d 201, 206 (D.C. Cir. 1994).

SUMMARY OF ARGUMENT

In the *Order* under review, the Commission interpreted AT&T's relevant tariffs as not barring CCI and PSE from moving traffic between their respective plans, and concluded that AT&T violated those tariffs in refusing to move such traffic as requested. The Commission's ruling is a reasonable exercise of its expertise in matters of tariff construction. Many of AT&T's principal arguments were not presented to the Commission below and thus are barred by 47 U.S.C. § 405(a). On the merits, AT&T has not demonstrated, as it must, that the Commission's ruling results from a "clear error in judgment." *Global NAPS, Inc.*, 247 F.3d at 258.

1. The Commission reasonably held that the transfer provision of AT&T's Tariff F.C.C. No. 2 did not prohibit the requested move of "traffic only" between CCI and PSE. The Commission explained that the requirement in tariff section 2.1.8 that the new customer (PSE) assume the obligations of the former customer (CCI) applied to the wholesale transfer of plans, and did not address – and therefore did not prohibit – the movement of traffic from one reseller to another. Furthermore, the FCC explained that the tariffs under which CCI and PSE took service permitted those resellers, respectively, to reduce and to increase the amount of 800 traffic that they purchased under their 800 service plans. The Commission concluded that the requested movement of traffic between CCI and PSE could reasonably be viewed as permissible "separate requests" for a reduction in traffic by CCI and an increase in traffic by PSE.

>>>>>> **2.** The Commission also reasonably concluded that, even if the requested movement of traffic between CCI and PSE would violate the "fraudulent use" provisions of AT&T's tariff (a question the agency found it unnecessary to decide), AT&T's refusal to move traffic from CCI to

PSE was not authorized under the tariff's "temporary suspen[sion of] service" remedy upon which AT&T relied below. That ruling was more than justified, particularly given the requirement of 47 C.F.R. § 61.2 that tariff provisions be "clear and explicit" and this Court's holding that the FCC may decline to enforce tariff provisions against customers for failure to comply with that provision, *Global NAPS, Inc.*, 247 F.3d at 258.

3. AT&T's newly-minted theory that the Commission's *Order* gives CCI and PSE an unlawful preference in violation of 47 U.S.C. § 203(c) was not presented to the Commission below, and thus is barred by 47 U.S.C. § 405(a). The argument fails on the merits in any event, because it depends upon AT&T's unsupported challenge to the Commission's conclusion that the CCI-to-PSE transaction could be viewed as permissible "separate requests" to reduce and add traffic.

ARGUMENT

Before the Commission, AT&T argued that section 2.1.8 of its tariff prohibited the transfer of "WATS" plans without the transferee's assumption of the transferring customer's existing liabilities. Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling, filed August 26, 1996, at 10 ("AT&T Opposition") (JA 249) ("in this case the relevant WATS services [to which section 2.1.8's transfer provisions apply] are the CSTP II Plans"). AT&T also argued that CCI's request to move "traffic only" to PSE without an assumption of liability by PSE violated the fraudulent use provisions of tariff section 2.2.4, and that tariff section 2.8.2 (which permits AT&T "to temporarily suspend service" for violations of the fraudulent use provisions) therefore authorized it to refuse CCI's request to move traffic to PSE. AT&T Further Comments, filed April 2, 2003, at 11 (J.A. 412). The Commission's *Order* reasonably answered the pertinent arguments that AT&T presented.

EXHIBIT E

Before the
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

In the Matter Of

Further comments requested on the
Joint Petition for Declaratory Ruling
On the Assignment of Accounts (Traffic) Regarding Internal File
Without the Associated CSTPIIRVPP Plans No. CCB/CPD 96-20
Under AT&T Tariff FCC No. 2

To the Commission:

Comments of:

Joseph Kearney
135 Forest Road
Mountain Top, PA 18707

Dear FCC Commissioners:

I have been informed that, after some delay, the FCC has opened this case. I wish to offer the following comments in my affirmation and support of Mr. Inga's position. I have been employed in the telecommunications industry for more than twenty years, ten of which were spent as an employee of both Bell of Pennsylvania and AT&T. I am writing this letter without expectation of material gain.

Companies under my control were aggregators of AT&T services including numerous CSTPII RVPP Option B plans. I am, therefore, familiar with the business strategy employed to assign accounts and restructure the "grandfathered" plans until AT&T applied a better discount.

AT&T forced me, like other aggregators, out of business. If I had the means, I too would have pursued legal remedy against AT&T. It was AT&T's good fortune that most aggregators were very small businesses without the resources required, on a practical basis, to bring suit. They were easy to bully. I certainly was not able to make AT&T adhere to the tariffs. The only aggregator, to my knowledge, having the will to fight AT&T's unethical and, I believe, illegal practices is Mr. Inga.

Mr. Inga is at this stage not because he had enough money to bring AT&T to justice (I doubt anyone has that much money); but rather because he knew the tariffs better than AT&T's product management personnel and has bet time and some fortune in the hope that an impartial court or commission would provide the opportunity of a fair hearing. I hope, for all of us, the Commission will provide such an environment.

I would say that most AT&T services aggregators knew Mr. Inga, not because his company was the industry leader, but because he knew the tariffs inside and out. He was the most knowledgeable person I had ever met at interpreting the interaction of the often obfuscatious tariff sections. It is one thing to read a section of a tariff and understand it; most people can do that . It

was, however, Mr. Inga's ability to see how, when one section of the tariff was changed, it affected the other sections.

While employed by AT&T, as a sales person, I worked with tariffs on a daily basis and found that when questions arose on tariff language in the marketplace I was, without exception, unable to get any **written** interpretation from product management. They simply would not risk putting a tariff interpretation in writing. "The tariff rules" customers were told, no matter what the sales person had told the customer about the tariff, (but, of course, the sales person couldn't get a pre-signing written interpretation). It was embarrassing having to deny a customer's request for a clarification in writing.

It was not until I left AT&T and became an aggregator, and later reseller, that I was able to realize that they seemed to want their cake and eat it too. They aggressively promoted a tariff discount program until they realized that perhaps the tariff was playing a tune they didn't like dancing to. Since they had appointed themselves judge and jury on tariff interpretation, anyone subscribing to the tariff was at the mercy of their interpretation du jour. AHA, I now understood why, as an employee, I was unable to get anything in writing – they might have to stick to it!

I believe that AT&T resented the education that Mr. Inga would freely give the aggregator community. If AT&T had complied with the tariffs, aggregators would have survived substantially longer and possibly still be in business today.

Here are my responses to the questions the FCC is seeking comment on:

1) There was no relationship between AT&T and the aggregator's customers, the end-users. The aggregator was allowed control of its customers as long as it did not violate the tariff.

2) The section of the tariff referencing theft of WATS through fraudulent means does not apply. Theft of WATS deals with stealing service and no service was stolen. The same customers paid AT&T; therefore, AT&T's claim that there is a theft of WATS is specious.

   Aggregators, in fact, were, on a regular basis, able to "save" accounts for AT&T by sharing their larger discounts on AT&T services with those accounts than they would normally receive from AT&T directly or, more beneficially for AT&T, from its competitors.

   The FCC should not allow AT&T to hold claim on all aggregators' businesses under the specious claim they were being defrauded. AT&T is blaming the victim. There are no more AT&T aggregators. We didn't decide to cease our profitable small businesses; we were victims of a predatory AT&T through its obfuscatious and arbitrary tariffs and their interpretations du jour.

   The FCC demanded that AT&T's tariffed plans be available for resale for the public's benefit. AT&T systematically resisted this directive and in fact did not allow it.

   AT&T needs to be held accountable and punished for their flagrant bullying of not only Mr. Inga's company but also for all the aggregators and the public.

Sincerely,

_____

Joseph Kearney

EXHIBIT F

Account Number	Bill Date	Payment Due Date
181 000-0093 508	JAN 01 1995	JAN 25 1995

AT&T

BILLING INQUIRIES CALL - 1 800 524-2333
TO PLACE AN ORDER CALL - 1 800 222-0400
SERVICE PROBLEMS CALL - 1 800 222-3000

THANK YOU FOR YOUR PROMPT PAYMENT

Total Payable Upon Receipt: N/A

SEE NEXT PAGE

ACCOUNT HAS CREDIT BALANCE. DO NOT PAY. SEE SUMMARY OF CHARGES PAGE FOR DETAILS.

To ensure proper credit, please detach this portion and return with remittance.

Remittance Document

002383 1 TB .264 SB 2000154

GLOBAL LONG DISTANCE
MARKETING,INC
7061 W COMMERCIAL BLVD
SUITE 5K
TAMARAC FL 33319-2144

Address Correction:

Please make checks payable to:

AT&T
P.O. BOX 730091
DALLAS, TX 75373-0091

AT&T

Account Number: 181 000-0093 508

Bill Date: 01-01-95

Amount Due: N/A

Amount Enclosed: N/A

1810000093508255070000000000000000000000000000007

Account Number	Bill Date	Payment Due Date
181 000-0093 508	JAN 01 1995	JAN 25 1995

AT&T

Other Charges and Credits

ITEM	DESCRIPTION	AMOUNT
	SERVICES BILLED FROM 181-000-0093-508	
	SERVICE ORDER NO: X0003606	
1.	CSTPII PREMIUM CREDIT	146,974.44CR
2.	CSTPII - OPTION B DISCOUNT	75.60CR
3.	REVENUE VOLUME PRICING PLAN FOR 11/94	861.66CR
	TOTAL OTHER CHARGES AND CREDITS (EXCL TAX)	147,911.70CR

Account Number	Bill Date	Payment Due Date
181 000-0099 259	JAN 01 1995	JAN 25 1995

AT&T

Other Charges and Credits

ITEM	DESCRIPTION	AMOUNT
	SERVICES BILLED FROM 181-000-0099-259	
	SERVICE ORDER NO: 00006647	
1.	CSTPII PREMIUM CREDIT	600,000.00CR
2.	CSTPII - OPTION B DISCOUNT	11,202.20CR
3.	REVENUE VOLUME PRICING PLAN FOR 11/94	7,610.58CR
	TOTAL OTHER CHARGES AND CREDITS (EXCL TAX)	618,812.78CR

EXHIBIT G

3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

- If the Customer terminates the CSTP II within the first year of the plan and concurrently establishes a new CSTP II of greater value, no additional one time 1/2¢ credit will apply.
- All other specific term plans and service discounts are excluded from the CSTP II with the exception of the $.01 per minute access line discount. The AT&T 800 Service-Domestic $.01 per minute access line discount is applied after the Term Plan discount but before the RVPP discount.
- The Customer must commit to an annual commitment for three years as shown in Sections 3.3.1.Q.1. and 3.3.1.Q.6., or two years as shown in Section 3.3.1.Q.7., or one year as shown in Section 3.3.1.Q.9, following.
- The Customer may add or delete an AT&T 800 Service or AT&T Custom 800 Service covered under the plan.
- In the event the Customer converts from another AT&T Term Plan to a CSTP II, there will be no decrease in the percent discount received by the Customer. *
- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.
- The Customer must also provide to AT&T, for each location participating in the above mentioned plan, written authorization for including the locations in the plan, billing account number and/or billed name, type of service, and address to which the bill is to be sent.
- In the event that a location is in default of payment, AT&T will seek payment from the Customer. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the discount by the amount of the billed charges not paid by that location, if any, and apportion the remaining discount, if any, to all locations not in default, and if payment is not fully collected by the above method, (2) terminate the RVPP/CSTP II for failure of the Customer to pay the defaulted payment.
- In the event of termination of the Customer's RVPP and/or Term Plan, the Customer being terminated must notify the individual locations that the RVPP and/or Term Plan has been discontinued and the individual locations not in default of their location billing charges will be converted to monthly rates as individual customers unless they notify AT&T otherwise.
- Shortfall and/or termination liability are the responsibility of the Customer. Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

>>>>>>>>>> S&T are responsibility of the Customer.

* This condition applies only to Customers whose CSTP II was in effect or on order prior to July 1, 1993. This does not apply to existing CSTP II Customers that renew their term plan after June 30, 1993.

EXHIBIT H

2.1.9. Retention of 800 Service Telephone Numbers - Customers may retain the same 800 Service telephone number when moving to another location within the Mainland or Hawaii.

2.1.10. Assignment and Reservation of International Toll-Free Numbers - A Customer, by its subscription to international AT&T 800 Services (Canada/Overseas/Mexico) and/or use of one or more of these AT&T services, authorizes AT&T to act as its agent in the procurement of foreign toll-free telephone numbers (also known as freephone numbers)to permit the completion of AT&T International Toll-Free Service calls originated in other countries via such toll-free numbers to Customer locations in the United States. Freephone numbers are obtained from foreign telecommunications administrations and/or foreign regulatory authorities for such countries, consistent with applicable law and AT&T's arrangements with foreign carriers. Among other things, the scope of such agency specifically includes authorization to act on customer's behalf as deemed necessary by AT&T, in its sole judgment and discretion based on all information actually available to it, to secure for Customer at least the same degree of flexibility and portability in the Customer's ability to use AT&T's International Toll-Free Service for completion of calls originated in each of such countries as the Customer enjoys under U.S. law ("Optimal International Portability"). Notwithstanding the foregoing, nothing herein shall divest Customer of the right or ability to act directly on its own behalf with regard to contacts and relations with such administrations or authorities concerning matters affecting its interests. N

AT&T has no control over the actions of such administrations and authorities or any other third parties whose action or inaction may affect the ultimate availability to customer of Optimal International Portability and expressly disclaims any warranty regarding the success or failure of its efforts on customer's behalf. N

2.2 USE

2.2.1. General - WATS may be used for any lawful purpose consistent with its transmission parameters. WATS is furnished for the transmission of voice and non-voice communications. For non-voice communications, typical uses are data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the service.

2.2.2. [Reserved for future use.]

2.2.3. Abuse - The abuse of WATS is prohibited. The following activities constitute abuse:

A. Using WATS to make calls which might reasonably be expected to frighten, abuse, torment, or harass another, or

B. Using WATS in such a way that it interferes unreasonably with the use of the service by others.

TARIFF defined USE as actual use of the transmission facilities. Not AT&T suspecting that some time years into the future AT&T is going to be deprived of collecting shortfall of a revenue commitment-- which is non use of AT&T service.

(Material previously on this page can now be found on Page 22.

EXHIBIT I

General Terms and Conditions

Transfer or Assignment

Service, including any associated telephone numbers, may be transferred from Customer to another party only to the extent permitted by applicable laws, rules and regulations, and if both AT&T and Customer consent to the transfer, the proposed new customer satisfies the AT&T eligibility criteria for the Service and any AT&T deposit conditions, and both the current Customer and proposed new customer sign AT&T's specified Transfer of Service Agreement form. The AT&T Transfer of Service Agreement **may** require the new customer to assume all of the current customer's obligations and the current Customer to remain jointly and severally liable for any obligations relating to the pre-transfer period.

EXHIBIT J

also be excluded from the proposed revisions.

Secondly, what if a customer has multiple tps or CTs and overall would not adverselya ffect AT&T with various transfers at any point in time? The proposed language assumes all such trasnfers are bad and custs not have deposits or current usage elsewhere to cover. —

Moreover, the combined 800 offerings in T1 would seem to rely on the T1 T&A which is currently different than T2 and which even after the proposed changes will not talk about 800 nos but only locations. How does this affect the proposed revisions. Maybe both provs should talk about locations with T2 talking about 800 locations. We should insure we know which tariff applies to the combined 800 tps for 800 service.

F. Do existing protections cover AT&T enough to avoid having to put this provision in the tariffs? These are items such as pro-rated annual commitments, termination liabilities, depocits and the like. In fact, it would seem that AT&T could rely on deposits in some manner and not have to impose any conditions on the customer to which the locations or 800 nos are being moved. The CSTP II deposit provs might be able to be made to accommodate this or the regular deposit provs: But it is true that a customer may refuse to pay under these Therefore, the newly proposed provisions should indicate that they would only apply after all other potential avenues had been exhausted. But the level of deposits a whole for any customer would has to be looked at.

Also, see below AT&T arguments that exist provs such as deposits, exist gen T&A section and existing fraudulent use sections could be used

G. Imposing these new provisions has the effect of imposing a requirement on 800 end users and tp or CT end users of outbond plans who might want to move themselves from an aggregator or switchless reseller tp or CT and it is not certain how the new provisions would affect this situation. We have to protect these people and insure they are not harmed by this provision as the end users actually control the 800 numbers.

Secondly, an ATT customer could move her or his 800 or outbound service locations to an aggregator or switchless reseller of MCI or Splint or some other IXC and avoid the situation here while any movement to ATT ags/resll would not be so lucky. In the second case, the end user might well have something to say about movement to non ATT but even in the first case, 800 end users may not want to be moved.

Some means probably should be developed to protect end users for both outbound and 800 services as movement of end users in Tariff 1 could raise a subtle question of a type of "slamming" which might well be the result of new language recognizing a customers movement of end users from one customer to another.

H. Let us be certain of what we are protecting AT&T from. Is it the loss of commitments that would be worrying AT&T? Or the actual result of uncollectibles from specific customers who have moved locations and/or 800 nos? Is it both? Why do we need to save AT&T from commitments per se? Why not jsut loss of payments for charges. If the moved locations are still with ATT, they may well generate enough money to keep ATT almost whole and not cause the need for this intrusive method of protection.

I. Finally, we could avoid all of these problems and make ATT leave the tariff alone and take any actions under its general operating practices. If a problem arises, then it can be settled in a complaint situation. Now, it would still go to the complaint process but the tariff would have decided the question and from the problems noted above, it might seem wise to avoid an arbitrary tariff resolution of what will become a complaint siutation ultimately and which should probably be decided on the merits or each case, as it would now before the new

tariff language is inserted to specifically protect AT&T against its various customers.

ATT Substantial Cause Showing

A. First, the SC indicates that the filing is made in light of a reseller cust's improper attempt to affect transfers of locations or 800 nos to a third party after its initial effort to transfer the plan resulted in a deposit requirement that it choose not to honor. This raises the question of why two tariffs and various term plans that affect far more than this one reseller need to be changed if the problem only involves one isolated reseller, who of course, is mad at AT&T.

This is especially true in that AT&T itself argues that the revisions are mainly just a clarification of existing provisions. If that is really the case, why not rely on the existing provisions if they are clear enough to actually cover this case and forget about the new language which is far more obtrusive than necessary for the case in point.

B. Secondly ATT argues that three provisions already cover it enough to avoid the SC as the new language would only be a clarification. The first prov relied on is the Abuse and Fraudulant Use sections. Att refs the provision which says fraudulant use is using fraudulant means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices. This section goes with using or attempting to use device with intent to avoid payment either in whole or in part , of any of ATT tariffied charges. It could aslo have referenced the prov that this inlcudes also rearranging, tempering with, or making connections not authorized by this tariff to any service component although that one usually has been things such as black boxes and the like although one could consider this rearranging or tampering with.

Two things to keep in mind about this one. First it indicates intent to and that is a judgement call which would have to be decided in a complaint case if the matter came up. Secondly, the usual punishment for violating these provisions is to temporarily suspend service and/or not accept requests for additional service. THis would raise a question about what impact it would have on disconnecting service by the bad customer and adding new service by another customer who has nopart in any fraud scheme or even the end user who cannot be said to be culpable. Sdspend service for the bad customer should not be allowed to force an end user to retainits suspension of service and should allow it to go to other ATT resellers or other IXCs/resellers or to a plan on its own with ATT or jsut take service separately from ATT nor restrict anotehr reseller of ATT service to pick up the suspended location if the end user wished to move. What ATT seems to propose in new provs might well go beyond this situation in that it does not even take intent into account but assumes it is there. And, ATT may intend to apply this in a manner that it will not let locations or 800 nos move and that could unjustly interfere with the rights of end users or anotehr customer.

Finally, the provisions noted by ATT here do not seemingly restrict TorA per se but the new regs do nor does it address TorA explicitly.

C. ATT says the deposit provs protect it as they require a deposit of customer whose financial responsibility isnot a matter of record. ATT says that a transfer of substantially all of custs accounts to a third party party constitutes a transfer of sub allof its assets to another and constitues a change in the customers' financial record. The application of this provision assumes that the transfer of all or a sub portionof a tp or CT would be a change in the financial responsibility and record but the application of the proposed revision may well cover cases in which this is not the case such as a customer who has a number of tps or CTs and who overall is not causing AT&T any risk by limited transfers or ongoing transfers that may simply show movement around the chess board but make ATT no worse off or at more risk.

Moreover the term financial responsibility is not a matter of record is certainly open to interpretation as to how it applies to the situation in hand and apparently ATT has not specifically defined it for the particular situation in question. Using the current deposit provision would allow judgement to be applied as to the exact situation involved and how it would fit in with the deposit. In any event, if the cust does not honor the deposit prov, it would seem the redress again would be to temp suspend serv and deny additional service to bad customer, but not to interfere with underlying rights of end users and other customers. The new language would prohibit transfers at all. Preferable to have this situation than the new langauge as it allows the FCC judgement in the matter of a complaint and does not prejudge it.

Finally, the provs ATT refers to here also do not explicityly prohibit TorA per se and do not directly address it.

D. Lastly ATT says that existing T&A rules seem to cover it in that they say new customer must agree to assume all obligations of the former customer. If ATT is so certain of this, why not forget the new language as by itself, there may be nothing untoward in what is happening but the result would vary by situation and the new langauge is too arbitrary.

Secondly, the language now talks about assuming obligations and says these obs include (but does not say "but not limited to") out indebtrd of serv and unexpired portion of min pay period(s). It says nothing about tp or CT obls and Tariff 2 refs to min pay period talk about min payment period is 1 day for WATS (which inlcudes cl 800) and for all other 800 services it would seem- 6.2.A. and 2.5.5. ANd charges applicable for min payment period include recurring charge(s), nonrecurring charges(s) and/or special construction charge(s). Moreover, in proposed revisions, ATT seems to leave this out of the item 5 location whereas they have it in both 2 and 5 for Tariff 1 already giving some credence to teh fact they see this as something new and additional.

Moreover, the unexpired portion of any applicable minpay period would not seemingly include unexpired portion of any term of service and usage or rev commit but has its own unique meaning and therefore, the provision about the term plan and commitments being included as par tof hte min pay period is conflicting v and we find in favor of customers in cases of conflicts. And in the case of Tariff 1 where the provs already exist, they would seemingly conflict too and would not be enforceable.

So the question of existing language in TorA already covering the situation here may well be questionable too given the above analysis although we agree our analysis is just one view and itself raises questions that might well leave the outcomd to a particular complaint with an FCC judgement rather than having the arbitrary new language.

E. The substantial Cause showing would seemingly have to be beffed up to pass muster as it never gets to any financial impact on AT&T but simply talks about ATT's interpretation of what the current situation and provisions should mean. Moreover, existing customers might well take exception with the statement in SC taht the revs do not affect rates oapplicable to exist tp or CT customers and any non rate affecting change is minor.

Finally, SC says ATT should not have to grandfather exist custs as get different admin rules based on only when entered into tps and that develop and implementing such rules would create needless regulatory complexities with attendant costs and delay. But this does not make sense. Would ATT not have to develop the same procedures for all customers now without grandfathering and do they not already have the exisitng procedures for existing customers. So what is the big deal. The new procedures have to be developed anyway. And they will have to be implemented in any event.

EXHIBIT K

The following is the text for the exhibit as the tariff exhibit as the tariff exhibit is not clear.

AT&T submission to FCC: TR 8179: Feb 14th 1995

"If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the term plan or Contract Tariff (based on the past 12 months of usage) would not meet the usage and/or revenue commitment of the volume or term plan or Contract Tariff, the transfer will be deemed a transfer of the associated volume or term plan or Contract Tariff to such other Customer(s), and may only be completed in accordance with this Section. If the transfer of service is to a group of two or more other Customers, the new Customer for the volume or term plan or contract tariff will be that group. Each customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and volume or term plan or Contract Tariff."

This was AT&T's proposed Tr8179 language that was denied by the FCC to change section 2.1.8 retroactively. The proposal would allow AT&T to force a PLAN TRANSFER when substantial traffic was transferred so as to force the plan commitments (revenue and time commitments and their associated liabilities for shortfall and termination liabilities) to transfer to the new customer. Because plan commitments do not transfer unless a plan transfers AT&T was forcing the plan to transfer.

2.1.7. Limitations on the Provision of WATS (continued)

B. Restoration of Service - In the event of failure, WATS will be restored in compliance with Part 64, Subpart D, of the FCC's Rules and Regulations.

C. Hazardous Locations - An access line will not be furnished at a location the Company considers hazardous (e.g., explosive atmosphere environments). In such cases, the Company, if so requested, will terminate the access line at a mutually agreeable alternate location. The Customer will then be responsible for extension of the access line to the hazardous location.

2.1.8. Transfer or Assignment - WATS, including any associated telephone number(s), may be transferred or assigned to a new Customer, provided that:

A. The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the new Customer.

B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s), including the unexpired portion of any term of service and usage or revenue commitment(s). C C

C. The Company acknowledges the transfer or assignment in writing. The acknowledgment will be made within 15 days of receipt of notification.

The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s). When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3).

Nothing herein or elsewhere in this tariff shall give any Customer, assignee, or transferee any interest or proprietary right in any 800 Service telephone number.

If a Customer seeks to transfer, to one or more other Customers, all or substantially all of the 800 numbers associated with an existing AT&T 800 Service Term Plan or Contract Tariff, and the anticipated result of such a transfer would be that the usage and/or revenue from the remaining 800 numbers associated with the Term Plan or Contract Tariff (based on the past 12 months of usage) would not meet the usage and/or revenue commitment of the Term Plan or Contract Tariff, the transfer will be deemed a transfer of the associated Term Plan or Contract Tariff to such other Customer(s), and may only be completed in accordance with this Section. If the transfer of service is to a group of two or more other Customers, the new Customer for the Term Plan or Contract Tariff will be that group. Each Customer in the group will be jointly and severally liable for all of the obligations associated with the transferred service and Term Plan or Contract Tariff. N N

2.1.9. Retention of 800 Service Telephone Numbers - Customers may retain the same 800 service telephone number when moving to another location within the Mainland or Hawaii.

EXHIBIT L

THE COURT: I'm reading your supplemental -- I read your supplemental brief and it doesn't seem to say all that. I mean, it seems to say that the issue is going to be decided by the FCC.

MR. CARPENTER: We thought the issue would be decided. The FCC asked us to withdraw the complaint because the FCC thought that we had done more in the tariff language than codify with the tariff already meant because it went beyond prohibiting these sorts of transfers of plans that would affect transfers of individual locations." We withdrew it at the FCC's request. We were not trying to mislead anyone.

As I said, the concept of primary jurisdiction referral has always meant that the federal plaintiff goes and files a complaint and even if the transmittal had taken effect, as I said, they still would have to file a complaint.

THE COURT: I'm puzzled because you just, in response to Judge Scirica's question, you said we thought that it would resolve the issue and in your primary argument -- in your first argument you said anybody that ever practiced communications law knows that a tariff becoming effective doesn't create any law or decide any issue of law.

MR. CARPENTER: I can understand why you

EXHIBIT M

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: July 28, 1993

TARIFF F.C.C. No. 2
4th Revised Page 61.16.1
Cancels 3rd Revised Page 61.16.1
Effective: July 28, 1993

3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

- The 800 CSTP II will commence on the first of the billing month following the Customer subscribing to the Term Plan.
- The Customer must subscribe to a new Revenue Volume Pricing Plan (see Section 3.3.1.M.). Customers ordering a CSTP II must also order an RVPP to cover all the same AT&T 800 Services. RVPP discounts apply after the Term Plan discounts.
- If the Customer terminates the CSTP II within the first year, the 1/2% credit must be repaid and will be added to the term plan cancellation penalty.
- There is a $50.00 per location charge to move a CSTP II location from an existing CSTP II to a new CSTP II or to another existing CSTP II. This charge is not applicable to the first 10 locations moved between plans in each calendar year, when the original plan is not discontinued.
- There is a $50.00 charge when an existing CSTP II is discontinued and all of its locations are concurrently moved to a new or existing CSTP II with a revenue commitment equal to or greater than the original plan being discontinued.

Sx
Sx
Cy
Cy
Ny
Ny

BULLET 4: Traffic Only Transfer:
There is a $50 per location charge to move individual locations from one plan to another. This confirms that traffic only can transfer without the plan under CSTPII plans.

BULLET 5: PLAN TRANSER
Only $50 to Move the Entire Plan

* Applicable after August 14, 1993.

x Material filed under Transmittal Nos. 5318, 5384 and 5447 is deferred to July 29, 1993 under Authority of Special Permission No. 93-603.
y Issued on three day's notice under authority of Special Permission No. 93-627.

Released in U.S.A.

EXHIBIT N

DATE 3/

CSTP/CSTP II/RVPP TRACKING LOG

1) CUSTOMER: [redacted] w/ tracker/conserve/upgrade DATE: 5/9/
PLAN ID NUMBER: [redacted] MOVE TO 1658 CODE #: 8453 B
8/1/94 from 183 560 lines mvs
Confirmation attached

2) ADD ACCOUNT

EXISTING ACCOUNT #	REPORT GROUP	CLASS TYPE	END-USER COMPANY NAME	LOCATION MOVEMENT CHARGE		LOCATION DISCOUNT CHANGE CHARGE		AT&T ORDER NUMBER
				Y	N	Y	N	
				Y	N	Y	N	
			PRO MD	Y	N	Y	N	
				Y	N	Y	N	
				Y	N	Y	N	
				Y	N	Y	N	
			183	Y	N	Y	N	
				Y	N	Y	N	
				Y	N	Y	N	
				Y	N	Y	N	
				Y	N	Y	N	
				Y	N	Y	N	

CODE 8453 B

*⇒ 487 Accts moved

EXHIBIT O

** All material on this page is new. **

2.5.18. Discontinuance Without Liability - (continued)

A. The Customer must provide written notice of discontinuance of the Old Plan to AT&T as provided in 1. and 2., following. If AT&T provides written notice to the Customer that its order for the New Plan is not accepted, the notice of discontinuance provided by the Customer shall be void.

1. If the Customer is AT&T's customer of record for the Old Plan on the day the Customer places its order for the New Plan, or at any time during the 30 preceding days, the Customer must provide written notice of discontinuance of the Old Plan on or prior to the day it places its order for the New Plan.

2. If the Customer is not AT&T's customer of record for the Old Plan on the day the Customer places its order for the New Plan, or at any time during the 30 preceding days, the Customer must provide written notice of discontinuance of the Old Plan, together with a valid Transfer of Service form submitted in accordance with Section 2.1.8., preceding, within three (3) days (excluding Saturdays, Sundays, and federal holidays) after AT&T provides written notice to the Customer that its order for the New Plan has been accepted. Pursuant to Section 2.1.8., preceding, AT&T may not agree to the transfer of assignment of an Old Plan that is subject of a defective Transfer of Service form. In such event, the Customer may provide a valid Transfer of Service form for the same Old Plan within ten (10) days after the date on which AT&T provides its written statement of reasons for not accepting the Transfer of Service form.

B. The service provided under the Old Plan must be replaced with service provided under the New Plan. The termination date of the Old Plan and the initial service date of the New Plan must be the same day, and all rates, terms and conditions of the Old Plan will remain in effect until that day, provided that the Old Plan shall not remain in effect beyond the expiration of its term. If the Customer cancels its order for the New Plan after the termination dated of the Old Plan, the discontinuance of the Old Plan will be a discontinuance with liability, and termination charges will apply pursuant to the terms of the Old Plan.

C. If the Old Plan includes an annual revenue commitment, a Shortfall Charge will apply as provided in 1., following. The Shortfall Charge will not apply in connection with the discontinuance of a CSTP II that was ordered on or prior to June 17, 1994, or the discontinuance of an Old Plan (other than a CSTP II) that was not in service as of December 9, 1995 or earlier.

1. If the Old Plan includes an annual revenue commitment, the Customer must satisfy the pro-rated annual revenue commitment as of the termination date of the Old Plan. . The pro-rated annual revenue commitment is the annual revenue commitment of the Old Plan, divided by twelve and multiplied by the number of months in the current plan year for which bills have been issued (as of the termination date of the Old Plan). If the Customer has not met the pro-rated annual revenue commitment, the Customer must pay a Shortfall Charge calculated in the same manner as specified for a failure to meet the annual commitment under the Old Plan, but based on the difference between the prorated annual revenue commitment and the actual charges applicable to satisfy the annual revenue commitment incurred during the months in the current plan year for which bills have been issued (of the termination date of the Old Plan).

** All material on this page is reissued except as otherwise noted. ** N

2.5.18. Discontinuance Without Liability - (continued)

1. If the New Plan is a VTNS Option, the termination date of the Old Plan and the date on which Substantially Complete Installation of the VTNS Option is attained (or such earlier date as the Customer may designate, no earlier than the date of initial service under the VTNS Option) must be the same day, and all rates, terms and conditions of the Old Plan will remain in effect until that day, provided that the Old Plan shall not remain in effect beyond the expiration of its term. If the Customer has designated a date that is earlier than the Substantially Complete Installation date, and cancels its order for the New Plan after the termination dated of the Old Plan but before the Substantially Complete Installation date of the VTNS Option, the discontinuance of the Old Plan will be a discontinuance with liability, and termination charges will apply pursuant to the terms of the Old Plan. N . . N

C. If the Old Plan includes an annual revenue commitment, a Shortfall Charge will apply as provided in 1., following. **The Shortfall Charge will not apply in connection with the discontinuance of a CSTP II that was ordered on or prior to June 17, 1994,** or the discontinuance of an Old Plan (other than a CSTP II) that was not either ordered on or prior to August 29, 1996 or in service on or prior to September 1, 1996. M . . M C C

1. If the Old Plan includes an annual revenue commitment, the Customer must satisfy the pro-rated annual revenue commitment as of the termination date of the Old Plan. The pro-rated annual revenue commitment is the annual revenue commitment of the Old Plan, divided by twelve and multiplied by the number of full billing months in the current plan year (as of the termination date of the Old Plan). If the Customer has not met the pro-rated annual revenue commitment, the Customer must pay a Shortfall Charge calculated in the same manner as specified for a failure to meet the annual commitment under the Old Plan, but based on the difference between the prorated annual revenue commitment and the actual charges applicable to satisfy the annual revenue commitment incurred during the full billing months elapsed in the current plan year (of the termination date of the Old Plan). M M C M C C M M M M C C M

Effective date of material filed under Transmittal No. 9229 is advanced to August 29, 1996 under authority of Special Permission No. 96-0677.
Certain material on this page formerly appeared on Page 34.7.

EXHIBIT P

3.3.1.N. AT&T 800 Term Plan-Location and Service Specific (continued)

3. Cancellation or Discontinuance of AT&T's 800 Term Plan-Location and Service Specific-Without Liability - The Customer may cancel or discontinue this term plan prior to the expiration of the 3 year term without liability when: C .

- Notice of cancellation of the term plan order is received before the last day of the current month, i.e., term plan order is received January 3, cancellation of the order notice must be received before January 31.
- The Customer orders a new AT&T 800 Term Plan from the Company with a revenue commitment equal to, or exceeding, the original commitment **or subsequently moves the AT&T 800 Service traffic to another AT&T Term Plan of equal or greater value. Discontinuance of the former term plan, and initiation of the "new" term plan must be done concurrently.**
- The Customer replaces its existing AT&T 800 Location and Service Specific Term Plan with a new AT&T 800 Location and Service Specific Term Plan with a revenue commitment equal to or exceeding the original total AT&T 800 Location and Service Specific Term Plan commitment.
- The Customer subsequently orders VTNS from AT&T's Tariff F.C.C. No. 12.
- The Customer replaces its existing AT&T 800 Location and Service Specific Term Plan with a new AT&T 800 Location and Service Specific Term Plan II with a total revenue commitment (monthly revenue commitment times the number of months in the term) equal to or exceeding the remaining term plan revenue commitment (i.e., the sum of the remaining monthly revenue commitments) on the existing AT&T 800 Location and Service Specific Term Plan.
- The Customer replaces its existing AT&T 800 Location and Service Specific Term Plan (either alone or in combination with other AT&T 800 Service term plans) with a new AT&T combined outward calling and inward calling discount plan in a new AT&T term plan (as specified in AT&T Tariff F.C.C. No. 1) with a total revenue commitment over the term of the new plan equal to or exceeding the sum of the remaining monthly and/or annual revenue commitments on the existing AT&T 800 Service term plan(s) being canceled and replaced with the new AT&T Tariff F.C.C. No. 1 term plan. Discontinuance of the former term plan(s) and

* Existing Customers with an AT&T 800 Location and Service Specific Term Plan in effect prior to September 5, 1991 remain subject to this condition. This condition does not apply to Customers whose AT&T 800 Location and Service Specific Term Plan becomes effective after September 4, 1991, including existing AT&T 800 Location and Service Specific Term Plan Customers that renew their term plan after September 4, 1991.

** This condition applies to Customers who order an AT&T Location and Service Specific Term Plan after September 4, 1991. . C

EXHIBIT Q

2.4.1.A. Placement of Orders, Payment of Bills and Compliance with Regulations (Continued)

3. **Use of 800 Numbers** - Each 800 telephone number must be placed in actual and substantial use. Any telephone number associated with AT&T 800 service which the Customer has installed that is not actually and substantially used may be recovered by AT&T immediately. AT&T will provide the Customer with written notice of such recovery, will retain control of the number for a period of not less than 60 days, and thereafter, will release the 800 number to the pool of numbers available for assignment in accordance with the industry practice and standards. As used herein, "substantial use" shall mean a pattern of use via the particular 800 number that demonstrates that the Customer is employing the number for the purpose for which it was intended, namely to allow callers to reach the Customer.

4. **Proof of Authorization for Carrier Change** - A Customer that is a telecommunications carrier (or that is acting on behalf of a telecommunications carrier) may not submit an order that will result in a change in a telecommunications subscriber's inbound telephone toll provider unless it first has obtained authorization from the subscriber, in compliance with any applicable FCC rules and without misleading the subscriber as to the identity of the carrier soliciting the carrier change or the relationship of that carrier to the Company. A Customer that submits such a carrier change order shall provide to the Company adequate proof of authorization and compliance within fifteen days after the Company makes a written request therefor. Sx .. .. Sx Cy Cy Sx .. Sx

B. **Agency Agreement** - The Company will accept orders from an agent appointed by the Customer. An agency appointment must be sent to the Company in writing. If directed by the Customer, the bill for WATS will be sent to the agent. The bill will be issued in the name of the Customer, in care of the agent.

The Customer retains responsibility for compliance with tariff regulations and any act or omission of the agent, regardless of any limitations the Customer may place on the agent's authority.

C. **Floor Space, Conduit and Electrical Power at a Customer's Premises** - The Customer must provide the equipment space, supporting structure, conduit and electrical power required to terminate an access line associated with AT&T 800 Service and AT&T WATS at a premises without charge to the Company. The space, structure, conduit and power must be made available in sufficient time to permit the installation to be completed prior to its due date. Selection of ac or dc power will be a matter of mutual agreement between the Customer and the Company.

D. **Access to Customer's Premises** - The Customer is responsible for arranging premises access at any reasonable time so that Company personnel may install, repair, maintain, inspect or remove an access line associated with AT&T 800 Service and AT&T WATS. Premises access must be made available at a time mutually agreeable to the Customer and Company.

X Material filed under Transmittal No. 10978 became effective on March 7, 1998.
Y Issued on not less than one day's notice under authority of Special Permission No. 98-0055.

EXHIBIT R

to the question, your Honor. I'll say it now because I don't want to seem to have waited to say it later. $54 million of commitment is a very big number. and the tariff provides for the ability to get three months of security. My belief would be that security deposits will be a smaller number on a regular basis than the security that was deposited here.

THE COURT: Would this be the biggest account that you have?

MR. WHITMER: $54 million is one of the largest commitments.

MR. BARILLARI: Your Honor, it would certainly be one of the largest transfers we've ever done.

THE COURT: That could very well be. It's possible.
I'm not treating it lightly. This not like transferring a Ford car to one person to another. We're talking about a large operation. I understand that.

MR. WHITMER: But there are literally - - my guess Is hundreds, if not thousands, of transfers that have happened among aggregators and aggregations plans.

THE COURT: I would be interested in transfers where the aggregation is of a monetary value of some significance more than $2 million.

MR. BARILLARI: I don't know that we have very

EXHIBIT S

us. We're being irreparably harmed because we can't get these people back.

Now, this case is about money. That is all it is about.

MR. WHITMER: That is true.

THE COURT: I know you would say something as sure as night follows day.

MR. MEANOR: Money' on our side as well as money on AT&T's side.

However, the customers that are transferred will be getting a bigger discount through Public Service than they are getting now. I grant that our clients will be making more money that they're making now.

This case is about nothing but money. The only person who is not going to make any more money if these transfers go through is AT&T. Our clients will make more money and our customers who are serviced will save money.

One more thing, your Honor. AT&T has denied to our clients a contract tariff. If AT&T will give us Contract Tariff 516, which Public Service has and was lucky enough and smart enough to get, we'll drop the case, take our customers back and pursue Contract Tariff 516.

If we can put on the same economic basis as Public Service with respect to our customers, we'll accept that as a compromise of this case.

MR. WHITMER: Contract Tariff 516 - - first of all, contract tariffs are a fairly new development in the Federal Communications Act regulatory scheme. What they are is a file tariff which embodies and effects, gives effect to terms and conditions that have been agreed upon between a carrier and subscriber.

Part of the contract tariff is qualification for the contract tariff. The filed contract tariff. It provides that people who are similarly situated - - is that the phrase, Mr. B? Similarly situated?

MR. BARILLARI: Yes.

MR. WHITMER: That is not technically correct.

THE COURT: The concept.

MR. WHITMER: Substantively, that is the concept.

If people can meet the qualifications of the contract tariff. They can ask for the contract tariff and they can take service under the contract tariff if they qualify.

I'm not aware of whether Winback & Conserve or Mr. Meanor talks about us and PSE. He's representing all of them here. I assume the "us" was Mr. Inga's companies.

I'm not aware of whether Contract Tariff 516 was requested by Mr. Inga within the so-called open period, the period during which other people can seek to subscribe to it, or it wasn't.

What is clear is - - whether AT&T passed on it - -

I don't know whether Mr. Barillari knows that, either.

THE COURT: What do you know, Mr. B?

MR. BARILLARI: Your Honor, as I stand here now, we have no record of one stop or Winback, either company's - -

THE COURT: Is the window you - -

MR. BARILLARI: The window on 516 has been closed for over a year and a half.

THE COURT: Can you open up the window? Can you open up 516 again?

MR. WHITMER: No.

THE COURT: Can you file a similar to 516 contract tariff?

I'm not suggesting you do it. What I'm saying to you is in the spirit of cooperation Mr. Meanor has said: if you'll give me a 516 tariff, I'll drop the lawsuit. There will be no more litigation. As long as I'm treated the same as PSE.

I don't know what that means, Mr. Whitmer. I'm not going to judge it.

What I'm saying to you is I think you should take under advisement why you can't give him a 516. if there is some reason why he shouldn't have it, then, of course, he shouldn't have it.

MR. HELEIN: That is not true.

MR. WHITMER: A business negotiation is always

open. AT&T does not have unlisted numbers.

MR. HELEIN: Your Honor, can I speak to the contract?

THE COURT: You get an automatic dial.

MR. HELEIN: On the contract tariff issue very briefly.

The contract tariffs, they're under an obligation to - - open window and closed windows is a means of discrimination. CCI, Combined Companies, request a contract tariff promising AT&T $200 million in revenue, 100 million of which would be Winback. They would gather from their competitors.

AT&T stonewalled Combined Communications and wouldn't give them a contract tariff. We could have filed a 406 for Combined Communications asking they be ordered to issue a contract tariff to us under the same thing they have denied service. That was the Commission's notice of apparent liability against AT&T that they find them $1 million back in January, which we provided you a decision on.

The bottom line is these contract tariffs must be allowed to be resold. That is how AT&T persuaded them to give the permission to do the contract tariffs.

They are in violation of that. They are stonewalling resale attempts by any customers which the notice of current liability also addresses.

MR. WHITMER: That was aggregators who had contract tariffs is quite considerable, your Honor.

MR. MEANOR: There 2,000 about contract tariffs outstanding with AT&T. Another thing in the business we'll show is Public Service Enterprises, a plaintiff in this case, is a subsidiary, basically, of General Electric.

THE COURT: I'm going to see you on Tuesday, March 21st.

MR. MEANOR: May I just finish one thing? The majority of Public Service is owned by General Electric. Hertz Technologies, a subsidiary of Hertz, is in the telephone reselling business as an independent, not an adjunct business.

Formally, hertz subscribed to the tariff that gave it the maximum discount. Couldn't use it all. It was in the side business of three or 400 reselling customers.

The business is lucrative. The big companies are going into it. Hertz Technologies has subscribed to Tariff 12. We can't get tariff - - if my clients except from Public Service, can't get Tariff 516. We'll take Tariff 12.

THE COURT: How about Tariff 12? Going once, going twice.

MR. BARILLARI: PSE has a Tariff 12.

MR. MEANOR: PSE.

THE COURT: What about Conserve?

MR. BARILLARI: They have to qualify for it.

THE COURT: What do they have to do

MR. BARILLARI: They have to have the same traffic patterns that the services are designed to accommodate. Currently, they don't have those traffic patterns.

MR. HELEIN: No, your Honor. That is not true. We have gone to AT&T.

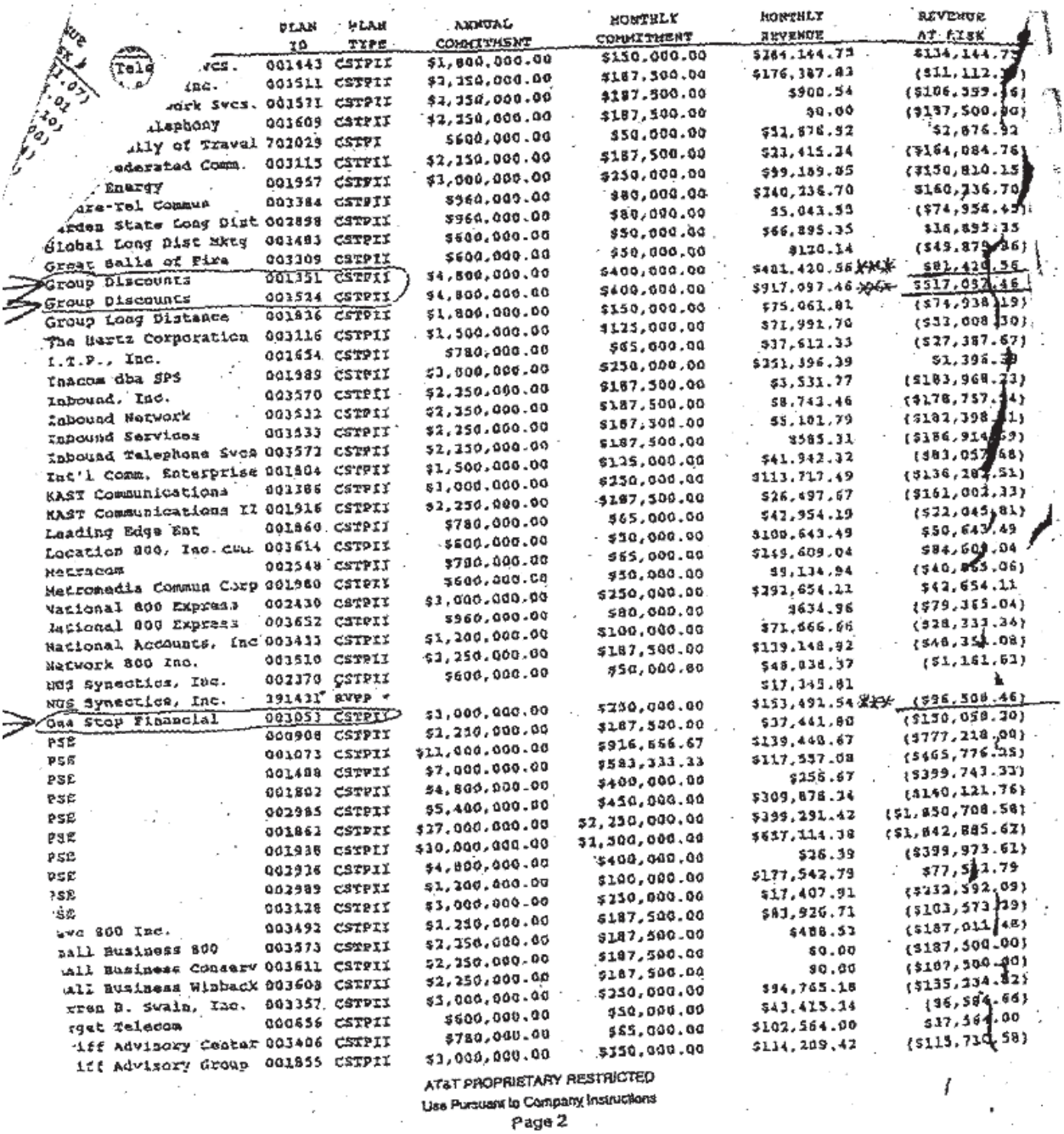
THE COURT: We'll see all you gentlemen, nine o'clock on Tuesday, March - -

EXHIBIT T

MINNEAPOLIS FRONT END CENTER
RVPP/CSTP AGGREGATORS
REVENUE AT RISK
Bill Date: 7/94

*** Indicates INGA'S PLANS

AGGREGATOR	PLAN ID	PLAN TYPE	ANNUAL COMMITMENT	MONTHLY COMMITMENT	MONTHLY REVENUE	REVENUE AT RISK
800 Access	003613	CSTPII	$1,200,000.00	$100,000.00	$35,016.46	($64,983.54)
800 Association, Inc.	002753	CSTPII	$4,800,000.00	$400,000.00	$33,724.82	($366,275.18)
800 Association, Inc.	002920	CSTPII	$2,250,000.00	$187,500.00	$246.75	($187,253.05)
800 Center, Inc. (The)	003416	CSTPII	$2,250,000.00	$187,500.00	$222,627.18	$35,127.18
800 Communications	003509	CSTPII	$2,250,000.00	$187,500.00	$133,094.97	($54,405.03)
800 Conserver Inc.	003534	CSTPII	$2,250,000.00	$187,500.00	$6,467.85	($181,032.15)
800 Consolidation, Inc	001649	CSTPII	$2,250,000.00	$187,500.00	$163,898.18	($24,601.82)
800 Discounts	002828	CSTPII	$24,000,000.00	$2,000,000.00	$2,030,268.50 ***	$30,268.50
800 Discounts	002829	CSTPII	$4,800,000.00	$400,000.00	$329,930.07 ***	($70,069.93)
800 Discount Center	003482	CSTPII	$2,250,000.00	$187,500.00	$256,313.78	$68,813.78
800 Group, Inc. HALE	003301	CSTPII	$2,250,000.00	$187,500.00	$39,988.75	($147,511.25)
800 Group Ohio	001278	CSTPII	$4,800,000.00	$400,000.00	$73.38	($399,926.62)
800 Group Ohio	002741	CSTPII	$2,250,000.00	$187,500.00	$248,488.04	$60,988.04
800 Plus, Inc. HALE	003079	CSTPII	$3,000,000.00	$250,000.00	$246,870.09	($3,129.91)
800 Plus, Inc. HALE	003081	CSTPII	$4,800,000.00	$400,000.00	$879.16	($399,120.84)
800 Provider Inc. Freeman	003437	CSTPII	$2,250,000.00	$187,500.00	$117,317.24	($70,182.76)
800 Sales Inc. HALE	003304	CSTPII	$2,250,000.00	$187,500.00	$17,574.85	($169,925.15)
800 Savings, Inc.	003491	CSTPII	$2,250,000.00	$187,500.00	$79,197.98	($108,302.02)
The 800 Services	003093	CSTPII	$2,250,000.00	$187,500.00	$271,154.32	$83,654.32
ADNET	001835	CSTPII	$2,250,000.00	$187,500.00	$144,130.56	($43,369.44)
ADS Communications	001437	CSTPII	$2,625,000.00	$218,750.00	$57,766.98	($160,983.02)
ADS Communications	003525	CSTPII	$2,250,000.00	$187,500.00	$286,571.09	$99,071.09
ADS Communications	993469	CSTPI	$600,000.00	$50,000.00	$49,657.92	($342.08)
ADS Communications	003556	CSTPII	$2,250,000.00	$187,500.00	$201,161.61	$13,661.61
Advanced Telecomm Netw	001263	CSTPII	$1,000,000.00	$250,000.00	$0.00	($250,000.00)
Advanced Telecomm Netw	001582	CSTPII	$13,000,000.00	$1,083,333.33	$892,608.23	($190,725.10)
Advanced Telecomm Netw	002945	CSTPII	$2,250,000.00	$187,500.00	$46,106.11	($141,393.89)
Advanced Telecomm Netw	002947	CSTPII	$4,800,000.00	$400,000.00	$5,055.92	($394,944.08)
Advanced Telecomm Netw	003120	CSTPII	$2,250,000.00	$187,500.00	$40.90	($187,459.10)
Advanced Telecomm Netw	003561	CSTPII	$3,000,000.00	$250,000.00	$380,388.68	$130,388.68
Aggregator Corporation	001928	CSTPII	$1,500,000.00	$125,000.00	$119,182.37	($5,817.63)
Alternet	003494	CSTPII	$600,000.00	$50,000.00	$75,936.12	$25,936.12
American WATS	003158	CSTPII	$960,000.00	$80,000.00	$35,694.08	($44,305.92)
Amerishare Commun Buying	003221	CSTPII	$600,000.00	$50,000.00	$27,760.42	($22,739.58)
Assn. of Long Distance	001462	TAR.15	$12,000,000.00	$1,000,000.00	$794,207.10	($205,792.90)
ATN, Inc.	001438	CSTPII	$4,800,000.00	$400,000.00	$7,797.22	($392,202.78)
ATN	003022	CSTPII	$3,000,000.00	$250,000.00	$34,507.65	($215,492.35)
ATN of PA	003623	CSTPII	$3,000,000.00	$250,000.00	$534,505.81	$284,505.81
Cable & Wireless	01JV00	CSTPI	$600,000.00	$50,000.00	$141,688.40	$91,688.40
~~Capitol Comm Corp~~	001806	CSTPII	$1,200,000.00	$100,000.00	$117,707.79	$17,707.79
Centex Telemanagement	002822	CSTPII	$600,000.00	$50,000.00	$130,836.17	$80,836.17
Commun Buying Group	003030	CSTPII	$1,200,000.00	$100,000.00	$70,060.77	($29,939.23)
CTC Telecommunications	001844	CSTPII	$2,250,000.00	$187,500.00	$82,740.90	($104,759.10)
Databoy, Inc.	001481	CSTPII	$1,000,000.00	$250,000.00	$45,890.44	($204,109.56)
DialNet (ATA)	002759	CSTPII	$600,000.00	$50,000.00	$46,544.70	($3,455.30)
Discount Comm Services	003516	CSTPII	$1,500,000.00	$125,000.00	$287,905.85	$162,905.85
Discount Services	003656	CSTPII	$1,500,000.00	$125,000.00	$0.00	($125,000.00)



	PLAN ID	PLAN TYPE	ANNUAL COMMITMENT	MONTHLY COMMITMENT	MONTHLY REVENUE	REVENUE AT RISK
Tele ...vcs.	001443	CSTPII	$1,800,000.00	$150,000.00	$284,144.75	$134,144.75
...Inc.	001511	CSTPII	$2,250,000.00	$187,500.00	$176,387.83	($11,112.17)
...ork Svcs.	001571	CSTPII	$2,250,000.00	$187,500.00	$900.54	($186,599.46)
...lephony	001609	CSTPII	$2,250,000.00	$187,500.00	$0.00	($187,500.00)
...ily of Travel	702029	CSTPI	$600,000.00	$50,000.00	$52,876.92	$2,876.92
...ederated Comm.	003115	CSTPII	$2,250,000.00	$187,500.00	$23,415.24	($164,084.76)
... Energy	001957	CSTPII	$3,000,000.00	$250,000.00	$99,189.85	($150,810.15)
...are-Tel Commun	003384	CSTPII	$960,000.00	$80,000.00	$240,236.70	$160,236.70
...rden State Long Dist	002898	CSTPII	$960,000.00	$80,000.00	$5,043.55	($74,956.45)
Global Long Dist Mktg	001483	CSTPII	$600,000.00	$50,000.00	$66,895.35	$16,895.35
Great Salls of Fire	003309	CSTPII	$600,000.00	$50,000.00	$120.14	($49,879.86)
Group Discounts	001351	CSTPII	$4,800,000.00	$400,000.00	$481,420.56	$81,420.56
Group Discounts	003524	CSTPII	$4,800,000.00	$400,000.00	$917,097.46	$517,097.46
Group Long Distance	001836	CSTPII	$1,800,000.00	$150,000.00	$75,061.81	($74,938.19)
The Hertz Corporation	003116	CSTPII	$1,500,000.00	$125,000.00	$71,991.70	($53,008.30)
I.T.P., Inc.	001654	CSTPII	$780,000.00	$65,000.00	$37,612.33	($27,387.67)
Inacom dba SPS	001989	CSTPII	$3,000,000.00	$250,000.00	$251,396.39	$1,396.39
Inbound, Inc.	003570	CSTPII	$2,250,000.00	$187,500.00	$3,531.77	($183,968.23)
Inbound Network	003532	CSTPII	$2,250,000.00	$187,500.00	$8,743.46	($178,757.54)
Inbound Services	003533	CSTPII	$2,250,000.00	$187,500.00	$5,101.79	($182,398.21)
Inbound Telephone Svcs	003572	CSTPII	$2,250,000.00	$187,500.00	$585.31	($186,914.69)
Int'l Comm. Enterprise	001804	CSTPII	$1,500,000.00	$125,000.00	$41,942.32	($83,057.68)
KAST Communications	001386	CSTPII	$1,000,000.00	$250,000.00	$113,717.49	($136,282.51)
KAST Communications II	001916	CSTPII	$2,250,000.00	$187,500.00	$26,497.67	($161,002.33)
Leading Edge Ent	001860	CSTPII	$780,000.00	$65,000.00	$42,954.19	($22,045.81)
Location 800, Inc. dba	003614	CSTPII	$600,000.00	$50,000.00	$100,643.49	$50,643.49
Metracom	002548	CSTPII	$780,000.00	$65,000.00	$149,609.04	$84,609.04
Metromedia Commun Corp	001980	CSTPII	$600,000.00	$50,000.00	$9,134.94	($40,865.06)
National 800 Express	002430	CSTPII	$3,000,000.00	$250,000.00	$292,654.11	$42,654.11
National 800 Express	003652	CSTPII	$960,000.00	$80,000.00	$634.96	($79,365.04)
National Accounts, Inc	003433	CSTPII	$1,200,000.00	$100,000.00	$71,666.66	($28,333.34)
Network 800 Inc.	003510	CSTPII	$2,250,000.00	$187,500.00	$139,148.92	($48,351.08)
NGS Synectics, Inc.	002370	CSTPII	$600,000.00	$50,000.00	$48,838.37	($1,161.63)
NGS Synectics, Inc.	191431	SVPP			$17,345.81	
One Stop Financial	003053	CSTPII	$1,000,000.00	$250,000.00	$153,491.54	($96,508.46)
PSE	000908	CSTPII	$2,250,000.00	$187,500.00	$37,441.80	($150,058.20)
PSE	001073	CSTPII	$11,000,000.00	$916,666.67	$139,448.67	($777,218.00)
PSE	001488	CSTPII	$7,000,000.00	$583,333.33	$117,557.08	($465,776.25)
PSE	001802	CSTPII	$4,800,000.00	$400,000.00	$256.67	($399,743.33)
PSE	002985	CSTPII	$5,400,000.00	$450,000.00	$309,878.24	($140,121.76)
PSE	001861	CSTPII	$27,000,000.00	$2,250,000.00	$399,291.42	($1,850,708.58)
PSE	001938	CSTPII	$10,000,000.00	$1,300,000.00	$457,114.38	($1,842,885.62)
PSE	002916	CSTPII	$4,800,000.00	$400,000.00	$26.39	($399,973.61)
PSE	002989	CSTPII	$1,200,000.00	$100,000.00	$177,542.79	$77,542.79
PSE	003128	CSTPII	$3,000,000.00	$250,000.00	$17,407.91	($232,592.09)
...ve 800 Inc.	003492	CSTPII	$2,250,000.00	$187,500.00	$83,926.71	($103,573.29)
...all Business 800	003573	CSTPII	$2,250,000.00	$187,500.00	$488.53	($187,011.48)
...all Business Conserv	003611	CSTPII	$2,250,000.00	$187,500.00	$0.00	($187,500.00)
...all Business Winback	003608	CSTPII	$2,250,000.00	$187,500.00	$0.00	($187,500.00)
...rren D. Swain, Inc.	003357	CSTPII	$3,000,000.00	$250,000.00	$94,765.18	($135,234.82)
...rget Telecom	000656	CSTPII	$600,000.00	$50,000.00	$43,415.34	($6,584.66)
...iff Advisory Center	003406	CSTPII	$780,000.00	$65,000.00	$102,564.00	$37,564.00
...iff Advisory Group	001855	CSTPII	$3,000,000.00	$250,000.00	$114,289.42	($115,710.58)

AT&T PROPRIETARY RESTRICTED
Use Pursuant to Company Instructions
Page 2

AGGREGATOR	PLAN ID	PLAN TYPE	ANNUAL COMMITMENT	MONTHLY COMMITMENT	MONTHLY REVENUE	REVENUE AT RISK
Tel-Save	003123	CSTPII	$1,000,000.00	$250,000.00	$120,578.93	($39,421.07)
Telecom Advantage	002983	CSTPII	$600,000.00	$50,000.00	$69,684.01	$19,684.01
Telecom Analysis, Inc.	003101	CSTPII	$12,000,000.00	$1,000,000.00	$81,860.90	($918,139.10)
Telecomm. Office	003657	CSTPII	$1,500,000.00	$125,000.00	$0.00	($125,000.00)
Telecommunications Serv	003308	CSTPII	$600,000.00	$50,000.00	$794.36	($49,205.64)
Telephony Services Inc	003569	CSTPII	$2,250,000.00	$187,500.00	$3,074.25	($184,425.75)
Touchtone Corp Service	001071	CSTPII	$2,250,000.00	$187,500.00	$283,895.56	$96,395.56
Touchtone 800	003124	CSTPII	$7,000,000.00	$583,333.33	$367,644.24	($215,689.09)
U.S. Telephone	003306	CSTPII	$1,200,000.00	$100,000.00	$77,763.50	($22,236.50)
United WATS	003151	CSTPII	$1,500,000.00	$125,000.00	$161,983.82	$36,983.81
Universal Telephone	002897	CSTPII	$960,000.00	$80,000.00	$56,735.70	($23,264.30)
Upgrade Services	003468	CSTPII	$1,500,000.00	$125,000.00	$306,137.13	Bought $181,137.13
Users Group Inc.	003026	CSTPII	$2,250,000.00	$187,500.00	$714.93	($186,785.05)
Users Group Inc.	003029	CSTPII	$4,800,000.00	$400,000.00	$20.54	($399,979.46)
Vista Group Int'l Ltd.	003548	CSTPII	$2,250,000.00	$187,500.00	$214,412.75	$26,912.75
Volume Discount	003610	CSTPII	$1,250,000.00	$187,500.00	$0.00	($187,500.00)
WATS International Crp	003356	CSTPII	$3,000,000.00	$250,000.00	$90,241.46	($159,758.54)
WATS/800, Inc.	001803	CSTPII	$4,800,000.00	$400,000.00	$60,560.68	($339,439.32)
WATS/800, Inc.	003612	CSTPII	$600,000.00	$50,000.00	$0.00	($50,000.00)
Winback & Conserve	001581	CSTPII	$3,000,000.00	$250,000.00	$264,717.51 XXXX	$14,717.51
Winback & Conserve	003631	CSTPII	$960,000.00	$80,000.00	$268,436.83 XXXX	$108,436.83
Win-Back Center Inc.	003607	CSTPII	$1,250,000.00	$187,500.00	$0.00	($187,500.00)
WorldTel Services, Inc	002647	CSTPII	$1,200,000.00	$100,000.00	$47,581.10	($52,418.90)
CSTP Subtotals			$189,855,000.00	$32,487,916.67	$17,650,571.14	($14,854,691.14)
			CONTRACT TARIFF AGGREGATORS			
800 Plus, Inc.	003621	CT-1081	$24,000,000.00	$2,000,000.00	$2,216,047.03	$216,047.03
American Tel Group	003378	CT-1081	$9,000,000.00	$750,000.00	$652,919.23	($97,080.77)
The Hertz Corporation	003576	CT-435	$3,600,000.00	$300,000.00	$157,071.70	($142,928.30)
Long Distance Direct	003577	CT-1081	$1,200,000.00	$100,000.00	$99,378.90	($621.10)
Mid-Com Commun, Inc.	003541	CT-969			$10,073.06	
Mid-Com Commun, Inc.	003542	CT-969			$1,005,306.33	
Mid-Com Commun, Inc.	003543	CT-969			$956,257.83	
Mid-Com CT Total			$45,000,000.00	$3,750,000.00	$1,971,637.22	($1,778,362.78)
CT Subtotals			$82,800,000.00	$6,900,000.00	$5,097,054.08	($1,802,945.92)
			PLANS MIGRATING TO CONTRACT TARIFF			
American Tel Group	001584	CSTPII	$12,000,000.00	$1,000,000.00	$6,380.72	($993,619.28)
Equal Net Commun	002717	CSTPII	$4,800,000.00	$400,000.00	$61,377.15	($338,622.85)
Long Distance Direct	003427	CSTPII	$1,200,000.00	$100,000.00	$114.50	($99,885.50)
Mid-Com Commun, Inc.	001745	CSTPII	$33,000,000.00	$2,750,000.00	$23,865.45	($2,726,134.55)
Mid-Com Consultants	001701	CSTPII	$33,000,000.00	$2,750,000.00	$35,745.31	($2,714,254.69)
Network Plus, Inc.	001903	CSTPII	$24,000,000.00	$2,000,000.00	$73,468.30	($1,926,531.70)
Network Plus, Inc.	003082	CSTPII	$4,800,000.00	$400,000.00	$225,135.31	($174,864.69)
Network Plus, Inc.	003083	CSTPII	$3,000,000.00	$250,000.00	$334,198.59	$84,198.59
U.S. Fibercom	001792	CSTPII	$1,200,000.00	$100,000.00	$4,345.14	($95,654.86)
Migrating to CT Subttl			$117,600,000.00	$9,750,000.00	$764,630.47	($8,985,369.53)
Total CSTP & CT			$389,655,000.00	$49,137,916.67	$23,512,255.69	($25,643,000.79)